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**THE CITY OF LINCOLN, NEBRASKA**

**ORDINANCE NO. \_\_\_\_\_**

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**AUTHORIZING AND PROVIDING FOR  
THE ISSUANCE OF  
SOLID WASTE MANAGEMENT REVENUE BONDS**

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**PASSED: \_\_\_\_\_, 2006**

**APPROVED: \_\_\_\_\_, 2006**

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\* This Table of Contents is not part of this Ordinance as adopted but is provided for convenience of reference only.

THE CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF REVENUE BONDS OF THE CITY OF LINCOLN, NEBRASKA FOR THE PURPOSES OF ITS SOLID WASTE MANAGEMENT FACILITIES; PRESCRIBING THE FORM AND DETAILS OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE ESTABLISHMENT, MAINTENANCE, REVISION AND COLLECTION OF CHARGES AND RATES FOR THE USE AND SERVICES OF THE SOLID WASTE MANAGEMENT FACILITIES AND THE APPLICATION, COLLECTION AND DISBURSEMENT OF THE REVENUES DERIVED THEREFROM; LIMITING THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON REVENUE BONDS ISSUED HEREUNDER SOLELY TO THE REVENUES OF THE SOLID WASTE MANAGEMENT FACILITIES AND PLEDGING SUCH REVENUES TO SUCH PAYMENT; SETTING FORTH THE CONDITIONS FOR THE ISSUANCE OF REVENUE BONDS HEREUNDER OR THE ISSUANCE OF OTHER SOLID WASTE MANAGEMENT REVENUE OBLIGATIONS PURSUANT HERETO; SETTING FORTH EVENTS OF DEFAULT AND THE RIGHTS AND REMEDIES OF THE REGISTERED OWNERS OF REVENUE BONDS ISSUED HEREUNDER; MAKING VARIOUS OTHER COVENANTS, AGREEMENTS AND PROVISIONS IN CONNECTION WITH THE FOREGOING; PROVIDING FOR SEVERABILITY; AND RELATED MATTERS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

ARTICLE I

FINDINGS; DEFINITIONS; CONTENT OF  
CERTIFICATES AND OPINIONS

**Section 1.01. Findings.** The Council (the “**Council**”) of The City of Lincoln, Nebraska (the “**City**”) hereby finds and determines as follows:

(a) The City has owned and now owns and operates one or more solid waste management facilities (collectively, the “**Enterprise**”) for the use and benefit of the City and its inhabitants.

(b) The City is authorized, pursuant to the provisions of (1) Sections 15-244, and 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended, and (2) Section 44 of Article IX of the City’s Home Rule Charter (the “**Charter**”), to issue and sell its solid waste management revenue bonds, payable solely from the revenues derived and to be derived from the operation of the Enterprise.

(c) On the date of adoption of this Ordinance, the City has no outstanding solid waste management revenue bonds and there are no liens or other encumbrances on the net revenues of the Enterprise.

(d) It is now necessary, desirable, advisable and in the best interest of the City that indebtedness of the City be incurred for the purpose of financing and refinancing the costs of acquiring, constructing, reconstructing, improving, extending, equipping or furnishing improvements to the Enterprise in accordance with the terms and conditions contained in this Ordinance.

**Section 1.02. Definitions of Words and Terms.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Ordinance and any Series Ordinance or Supplemental Ordinance, and any Certificate, opinion, or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Unless otherwise defined in this Ordinance, all terms used herein shall have the meanings assigned to such terms in the Act (hereinafter defined).

**“Accreted Value”** means, with respect to any Capital Appreciation Bond, the principal amount thereof plus the interest accrued thereon from the date of original issuance thereof to the Periodic Compounding Date next preceding the date of computation or the date of computation if a Periodic Compounding Date, such interest to accrue at the interest rate per annum of the Capital Appreciation Bonds determined in accordance with such Series Ordinance compounded periodically on each Periodic Compounding Date, plus, if such date of computation shall not be a Periodic Compounding Date, a portion of the difference between the Accreted Value as of the immediately preceding Periodic Compounding Date (or the date of original issuance if the date of computation is prior to the first Periodic Compounding Date succeeding the date of original issuance) and the Accreted Value as of the immediately succeeding Periodic Compounding Date, calculated based upon an assumption that, unless otherwise provided in such Series Ordinance, Accreted Value accrues in equal daily amounts on the basis of a year consisting of twelve 30-day months.

**“Act”** means Sections 15-244 and 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended, and Section 44 of Article IX of the Charter of the City, as each may be amended from time to time.

**“Aggregate Debt Service”** for any period means, as of any date of calculation, the sum of the amounts of Debt Service for such period with respect to all Bonds.

**“Appreciated Value”** means, with respect to any Deferred Income Bond, (a) as of any date of computation prior to the Current Interest Commencement Date with respect to such Deferred Income Bond, an amount equal to the principal amount of such Bond plus the interest accrued on such Bond from the date of original issuance of such Bond to the Periodic Compounding Date next preceding the date of computation or the date of computation if a Periodic Compounding Date, such interest to accrue at the interest rate per annum of the Deferred Income Bonds determined in accordance with the Series Ordinance authorizing such Bonds, compounded periodically on each Periodic Compounding Date, plus, if such date of computation shall not be a Periodic Compounding Date, a portion of the difference between the Appreciated Value as of the immediately preceding Periodic Compounding date (or the date of original issuance if the date of computation is prior to the first Periodic Compounding Date succeeding the date of original issuance) and the Appreciated Value as of the immediately succeeding Periodic Compounding Date, calculated based upon an assumption that, unless otherwise provided in the Series Ordinance authorizing such Deferred Income Bonds, Appreciated Value accrues in equal daily amounts on the basis of a year consisting of twelve 30-day months and (2) as of any date of computation on and after the Current Interest Commencement Date, the Appreciated Value on the Current Interest Commencement Date.

**“Arbitrage Instructions”** means the Arbitrage Instructions included with any Tax Certificate, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Authorized Investments”** means any of the following investments in which the City may legally invest sums subject to its control pursuant to the Constitution and statutes of the State and the Charter of the City (all as may be amended from time to time):

(a) Any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States, including obligations of any Federal agency to the extent unconditionally guaranteed by the United States, and any certificates or any other evidences of an ownership interest in obligations or in specified portions thereof (which may consist of specified portions of the interest thereon) of the character described in this paragraph (a);

(b) Any bonds or other obligations of any state of the United States or of any agency, instrumentality or local governmental unit of any such state (1) which are (A) not callable prior to maturity or (B) as to which irrevocable instructions have been given to the trustee or paying agent of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (2) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described in paragraph (a) above which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the redemption date or dates specified in the irrevocable instructions referred to in clause (1) of this paragraph (b), as appropriate, (3) as to which the principal of and interest on the bonds and obligations of the character described in clause (1) above which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph (b) on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (1) of this paragraph (b) as appropriate, and any certificates or any other evidences of an ownership interest in obligations or specified portions thereof (which may consist of specified portions of the interest thereon) of the character described in this paragraph (b);

(c) Any bonds or other obligations or specified portions thereof (which may consist of specified portions of the interest thereon) which the Finance Director determines are of credit quality essentially equivalent to the investments described in paragraph (a) above, and any certificates or any other evidences of an ownership interest in obligations or specified portions thereof (which may consist of specified portions of the interest thereon) of the character described in this paragraph (c);

(d) Bonds, debentures, or other evidences of indebtedness issued or guaranteed by any agency or corporation which has been or may hereafter be created pursuant to an Act of Congress as an agency or instrumentality of the United States;

(e) New housing authority bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States; or project notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States;



(f) Obligations of any state of the United States, or of any agency, instrumentality or local government unit of any such state which are, at the time of purchase, rated by Moody's and Standard & Poor's in either of its two highest whole rating categories, for comparable types of debt obligations;

(g) Certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Registrar) or any savings and loan association, in each case, which is an insured depository institution (as defined in 12 U.C.C. §§ 1801 et seq.) provided that the aggregate principal amount of all certificates of deposit issued by any such bank, trust company, national banking association or savings and loan association which are purchased with monies held in any fund or account under the Ordinance shall be (1) fully insured by the Federal Deposit Insurance Corporation or (2) secured, to the extent not insured by the Federal Deposit Insurance Corporation, by such securities as are described in paragraphs (a) through (f), inclusive, or paragraphs (h) through (j), inclusive, of this definition having market value (exclusive of accrued interest, other than accrued interest paid in connection with the purchase of such securities) at least equal to the principal amount of such certificates of deposit (or portion thereof not insured by the Federal Deposit Insurance Corporation) which shall be lodged with the Registrar or another fiduciary, as custodian, by such bank, trust company, national banking association or savings and loan association shall furnish the Registrar or the City Treasurer, as the case may be, with an undertaking satisfactory to him or it that the aggregate market value of all such obligations securing such certificates of deposit will at all times be an amount which meets the requirements of this clause (2) and the City Treasurer or the Registrar, as the case may be, shall be entitled to rely on each such undertaking;

(h) Commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1" by Standard & Poor's and which matures not more than 270 calendar days after the date of purchase;

(i) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's;

(j) Any repurchase agreement which is secured by any one or more of the securities described in paragraphs (a) through (e), inclusive, of this definition;

(k) Interests in a portfolio of debt instruments containing only obligations described in any of the foregoing paragraphs, including, without limitation, a mutual fund or a money market fund satisfying the requirements of this paragraph (k); and

(l) Any other obligations which are, at the time of purchase, rated by Moody's and Standard & Poor's or which are guaranteed or provided by an entity which is rated by Moody's and Standard & Poor's in either of its two highest whole rating categories.

**"Authorized Representative"** means the Finance Director and any other officer or employee of the City authorized by the Finance Director to act as an Authorized Representative.

**"Bond" or "Bonds"** means any bonds, notes or other obligations or evidences of indebtedness, as the case may be, authenticated and delivered under and Outstanding pursuant to this Ordinance but shall not mean Subordinated Indebtedness.

**“Bond Counsel”** means any firm of attorneys specializing in the field of municipal finance law, selected by the City.

**“Bond Fund”** means The City of Lincoln, Nebraska Solid Waste Management Revenue Bond Fund established with the City pursuant to **Section 5.02(b)(2)** hereof.

**“Bond Obligation”** means, as of any date of calculation, (a) with respect to any Outstanding Current Interest Bond, the principal amount of such Bond, (b) with respect to any Outstanding Capital Appreciation Bond, the Accreted Value thereof as of the date on which interest on such Capital Appreciation Bond is compounded next preceding such date of calculation (unless such date of calculation is a date on which such interest is compounded, in which case, as of such date), and (c) with respect to any Outstanding Deferred Income Bond, the Appreciated Value thereof as of the date on which interest on such Deferred Income Bond is computed next preceding such date of calculation (unless such date of calculation is a date on which such interest is compounded, in which case as of such date).

**“Bond Register”** means the Bond Register as defined in **Section 2.07** hereof.

**“Book-Entry Bond”** means a Bond authorized to be issued to, and, except as provided (a) in **Section 2.10(d)** hereof or (b) to the extent provided in the Series Ordinance authorizing such Bond, restricted to being registered in the name of, a Securities Depository for the participants in such Securities Depository or the beneficial owners of such Bond.

**“Business Day”** means any day other than (a) a Saturday, Sunday, or a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed, (b) for purposes of payments and other actions relating to Bonds for which a Credit Facility is provided, a day upon which commercial banks in the city in which is located the office of the provider of the Credit Facility at which demands for payment thereunder are to be presented are authorized or obligated by law or executive order to be closed, and, (c) if specified in a Series Ordinance, a day upon which City offices are authorized to be closed.

**“Capital Appreciation Bonds”** means any Bonds the interest on which is (a) compounded periodically on dates that are determined in accordance with the Series Ordinance authorizing such Capital Appreciation Bonds and (b) payable only at the maturity, earlier redemption or other payment thereof pursuant to the Ordinance or the Series Ordinance authorizing such Capital Appreciation Bonds.

**“Certificate,” “Statement,” “Request,” “Requisition”** and **“Order”** of the City means, respectively, a written certificate, statement, request, requisition or order signed by an Authorized Representative.

**“City”** means The City of Lincoln, Nebraska.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

**“Construction Fund”** means the Construction Fund established with the City pursuant to the provisions of **Section 5.02(b)(7)** hereof.

**“Costs,”** with respect to the Enterprise or any part thereof, means the costs, expenses and liabilities paid or incurred or to be paid or incurred by the City in connection with the planning, engineering, designing, acquiring, constructing, installing, financing, operating, maintaining, repairing,

extending, improving, reconstructing, retiring, decommissioning and disposing thereof and the obtaining of governmental approvals, certificates, permits and licenses with respect thereto, including, but not limited to, any good faith or other similar payment or deposits required in connection with the acquisition or construction of such part of the Enterprise, the cost of acquisition by or for the City of real and personal property or any interests therein, costs of physical construction of such part of the Enterprise and costs of the City incidental to such construction or acquisition, all costs relating to injury and damage claims relating to such part of the Enterprise, preliminary investigation and development costs, engineering fees and expenses, contractors' fees and expenses, the costs of labor, materials, equipment and utility services and supplies, legal and financial advisory fees and expenses, capitalized interest and financing costs, including, without limitation, bank commitment and letter of credit fees and bond insurance and indemnity premiums, fees and expenses of the Fiduciaries (if any), administration and general overhead expense and costs of keeping accounts and making reports required by this Ordinance prior to or in connection with the completion of acquisition or construction of such part of the Enterprise, amounts, if any, required by this Ordinance to be paid into the Bond Fund to provide, among other things, for interest accruing on Bonds or into the Reserve Fund to provide for such reserves, if any, as may be specified in a Series or Supplemental Ordinance or to be paid into the Revenue Fund for any of the respective purposes thereof, payments when due (whether at the maturity of principal or the due date of interest or upon redemption) on any indebtedness of the City with respect to the Enterprise and reserves therefor, and all federal, state and local taxes and payments in lieu of taxes in connection with any part of the Enterprise and shall include reimbursements to the City for any of the above items theretofore paid by or on behalf of the City.

**“Credit Facility”** means a letter of credit, line of credit, liquidity facility or other credit facility issued by a financial institution or other form of credit enhancement, including, but not limited to, municipal bond insurance and guarantees, delivered to the Paying Agent for all or a portion of a Series of Bonds, which provides for payment, in accordance with the terms of such Credit Facility, of principal, Accreted Value, Appreciated Value, premium and/or interest of all or a portion of a Series of Bonds and/or the purchase price of such Series of Bonds or portion thereof. A Credit Facility may be comprised of one or more credit facilities issued by one or more financial institutions.

**“Current Interest Bonds”** means the Bonds of any Series, other than Capital Appreciation Bonds or Deferred Income Bonds, which pay interest at least annually to the Owners thereof excluding the first payment of interest thereon.

**“Current Interest Commencement Date”** means with respect to any particular Deferred Income Bonds, the date determined in accordance with the Series Ordinance authorizing such Deferred Income Bonds (which date must be prior to the maturity date for such Deferred Income Bonds) after which interest accruing on such Deferred Income Bonds shall be payable periodically on dates determined in accordance with such Series Ordinance, with the first such payment date being the first such periodic date immediately succeeding such Current Interest Commencement Date.

**“Debt Service”** for any period means, as of any date of calculation and with respect to any Series of Bonds, an amount equal to the sum of (a) interest accruing during such period on Bonds of such Series, except to the extent that such interest is to be paid from deposits in the Bond Fund made from the proceeds of Bonds, Subordinated Indebtedness or other evidences of indebtedness of the City (including amounts, if any, transferred thereto from the Construction Fund) and (b) that portion of each Principal Installment for such Series which would accrue during such period if such Principal Installment were deemed to accrue daily in equal amounts from the next preceding Principal Installment due date for Bonds of such Series (or, if (1) there shall be no such preceding Principal Installment due date or (2) such preceding Principal Installment due date is more than one year prior to the due date of such Principal

Installment, then, from a date one year preceding the due date of such Principal Installment or from the date of issuance of the Bonds of such Series, whichever date is later). Such interest and Principal Installments for Bonds of such Series shall be calculated on the assumption that (A) no Bonds (except for Option Bonds actually tendered for payment prior to the stated maturity thereof) of such Series Outstanding at the date of calculation will cease to be Outstanding except by reason of the payment of each Principal Installment on the due date thereof, (B) the principal amount of Option Bonds tendered for payment before the stated maturity thereof shall be deemed to accrue on the date required to be paid pursuant to such tender, and (C) the Reserve Requirement held in an account in the Reserve Fund with respect to a Series of Bonds will be applied to the final maturity of such Series of Bonds.

**“Deferred Income Bonds”** means any Bond issued under the Ordinance as to which interest accruing prior to the Current Interest Commencement Date is (a) compounded periodically on dates determined in accordance with the Series Ordinance authorizing such Deferred Income Bonds and (b) payable only at the maturity, earlier redemption or other payment thereof pursuant to the Ordinance or the Series Ordinance authorizing such Deferred Income Bonds.

**“Depreciation”** means the depreciation and amortization expenses with respect to the Enterprise, classified as such in accordance with generally accepted accounting principles for proprietary governmental operations such as the Enterprise.

**“Enterprise”** means all properties and assets, and interests in properties and assets, real and personal and tangible and intangible, of the City now or hereafter existing used for or pertaining to collecting, separating, storing, transporting, transferring, processing, treating, disposing or recycling solid waste and shall be broadly construed to encompass and include all Projects, now existing and hereafter acquired by lease, contract, purchase or otherwise or constructed by the City, including any interest or participation of the City in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to such facilities, properties or assets or any part thereof hereafter made and together with all lands, easements and rights of way of the City and all other works, property or structures of the City and contract rights and other tangible and intangible assets of the City used or useful in connection with any of the foregoing.

**“Event of Default”** has the meaning given to such term in **Section 10.01** hereof.

**“Federal Securities”** means direct obligations of, or obligations the timely payment of which are unconditionally guaranteed by, the United States or the Treasury Department of the United States or securities or receipts evidencing direct ownership interests in the foregoing obligations or specific portions (such as principal or interest) of the foregoing obligations which are maintained under the book entry system operated by Federal Reserve Banks.

**“Fiduciary”** means each Registrar and/or Paying Agent appointed pursuant to a Series Ordinance and shall include the trustee, if any, appointed pursuant to a Series Ordinance.

**“Finance Director”** means the Finance Director of the City appointed and acting pursuant to Chapter 2.10 of the Municipal Code of the City.

**“Fiscal Year”** means the fiscal year of the City.

**“Independent Consultant”** means an independent firm, person or corporation recognized as having expertise and with a favorable reputation for special skill and knowledge in the operations and financing of municipal solid waste management facilities similar in size to the Enterprise.

**“Insurance Consultant”** means an individual or firm selected by the City qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the Enterprise and having a favorable reputation for skill and experience in making such surveys and recommendations.

**“Interest Account”** means the account by that name established in the Bond Fund pursuant to the provisions of **Section 5.02(b)(1)** hereof.

**“Moody’s”** means Moody’s Investors Service, a corporation, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City (other than Standard & Poor’s).

**“Municipal Obligations”** means municipal obligations, rated in the highest Rating Category by any Rating Agency meeting the following conditions:

(a) the municipal obligations are not to be redeemable prior to maturity, or the trustee, registrar or paying agent, as appropriate, with respect to such obligations has been given irrevocable instructions concerning their calling and redemption;

(b) the municipal obligations are secured by Federal Securities, which Federal Securities, except for provisions relating to surplus money not required for the payment of the municipal obligations and the substitution of such Federal Securities for other Federal Securities satisfying all criteria for Federal Securities, may be applied only to interest, principal and premium payments of such municipal obligations;

(c) the principal of and interest on the Federal Securities (plus any cash in the escrow fund) are sufficient, without reinvestment, to meet the liabilities of the municipal obligations; and

(d) the Federal Securities serving as security for the municipal obligations are held by an escrow agent or trustee.

**“Net Revenues”** means Revenues less Operation and Maintenance Expenses plus Depreciation, determined in accordance with generally accepted accounting principles for proprietary governmental operations such as the Enterprise.

**“Operation and Maintenance Expenses”** means the necessary expenditures for operating and maintaining the Enterprise and shall include expenditures generally classified as operating expenses in accordance with generally accepted accounting principles for proprietary governmental operations such as the Enterprise.

**“Opinion of Bond Counsel”** means a written opinion of Bond Counsel.

**“Option Bonds”** means Bonds which by their terms may or are required to be tendered by and at the option of the Owner thereof for payment by the City prior to the stated maturity thereof, or the maturities of which may be extended by and at the option of the Owner thereof.

**“Ordinance”** or **“this Ordinance”** means this Ordinance passed by the Council on \_\_\_\_\_, 2006 and approved by the Mayor on \_\_\_\_\_, 2006, as amended, modified or supplemented from time to time by any Series Ordinance or Supplemental Ordinance.

**“Outstanding”** means, when used as of any particular time with reference to Bonds (subject to the provisions of **Section 11.09** hereof), all Bonds theretofore, or thereupon being, authenticated and delivered by the Registrar under this Ordinance except (a) Bonds theretofore cancelled by the Paying Agent or surrendered to the Paying Agent for cancellation (or in the case of Book-Entry Bonds, to the extent provided in **Section 2.10(f)** hereof, portions thereof deemed to have been cancelled); (b) Bonds (or in the case of Book-Entry Bonds, to the extent provided in **Section 2.10(h)** hereof, portions thereof with respect to which all liability of the City shall have been discharged in accordance with **Section 9.02** hereof, including Bonds (or portions of Bonds) referred to in **Section 11.10** hereof; (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Registrar pursuant to this Ordinance; and (d) Bonds no longer deemed to be outstanding hereunder as provided in the Series Ordinance pursuant to which such Bonds were issued.

**“Owner,”** whenever used herein with respect to a Bond, means the Person in whose name such Bond is registered.

**“Paying Agent”** means the person or institution, which may include the City Treasurer or the Finance Director or his designee, or such other agent or official of the City as may be designated in a Series Ordinance to make payments of the principal or Redemption Price of and interest on the Series of Bonds authorized by such Series Ordinance to the registered owners thereof.

**“Payment Date”** means, with respect to a Series of Bonds, the date upon which any principal, Accreted Value, Appreciated Value or Redemption Price, and interest thereon is payable to the registered owners of such Series of Bonds.

**“Periodic Compounding Date”** means, with respect to a Capital Appreciation Bond or a Deferred Income Bond, the periodic date determined in accordance with the Series Ordinance authorizing such Capital Appreciation Bond or Deferred Income Bond on which interest on such Bond is to be compounded.

**“Person”** means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Principal Account”** means the account by that name established in the Bond Fund pursuant to the provisions of **Section 5.02(b)(1)** hereof.

**“Principal Installment”** means, as of any date of calculation and with respect to any Series, so long as any Bonds thereof are Outstanding, (a) the principal amount of Bonds (including the principal amount of any Option Bonds tendered for payment prior to the stated maturity thereof) of such Series due (or so tendered for payment) on a certain future date for which no Sinking Fund Installments have been established, or (b) the unsatisfied balance (determined as provided in **Section 5.05(e)** hereof) of any Sinking Fund Installments due on a certain future date for Bonds of such Series, plus the amount of the sinking fund redemption premiums, if any, which would be applicable upon redemption of such Bond on such future date in a principal amount equal to such unsatisfied balance of such Sinking Fund Installments, or (c) if such future dates coincide as to different Bonds of such Series, the sum of such principal amount of Bonds and of such unsatisfied balance of Sinking Fund Installments due on such future date plus such applicable redemption premiums, if any.

**“Project”** means any solid waste management facilities, and all other property, real and personal, of every kind and nature material or pertinent thereto or necessary therefor, located within or without the City or the State, which may be used by or useful to the City in the collection, separation, storage, transportation, transfer, processing, treatment, disposal or recycling of solid waste, including any interest therein or right to capacity thereof, and may include, without limitation, a divided or undivided interest of the foregoing facilities in which the City may participate as an owner in common with others.

**“Prudent Enterprise Management”** means any of the practices, methods and acts (including, without limitation, any practices, methods and acts engaged in or approved by a significant portion of the solid waste management industry) which, in the exercise of reasonable judgment, in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety and expediency. In applying the standard of Prudent Enterprise Management to any matter under the Ordinance, equitable consideration shall be given to the circumstances, requirements and obligations of the City, and there shall be taken into account the fact that the City is a political subdivision of the State with prescribed statutory powers, duties and responsibilities. Prudent Enterprise Management is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety and expediency. Prudent Enterprise Management includes due regard for manufactures’ warranties and the requirements of governmental agencies which have jurisdiction.

**“Rating Agency”** means Moody’s, Standard & Poor’s, or any other nationally recognized securities rating agency selected by the City.

**“Rating Category”** means (a) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (b) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Rebate Fund”** means the Rebate Fund established with the City pursuant to the provisions of **Section 5.02(b)(v)** hereof.

**“Receiver”** has the meaning set forth in **Section 10.02** hereof.

**“Redemption Price”** means, with respect to any Bond (or portion thereof), the principal amount, Accreted Value or Appreciated Value of such Bond (or portion) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and this Ordinance.

**“Refunding Bonds”** means all Bonds whether issued in one or more Series, authorized pursuant to **Section 3.03** hereof, to the extent the proceeds thereof are used or allocated to pay or to provide for the payment of Bonds.

**“Registrar”** means the person or institution, which may include the City Treasurer or the Finance Director or his designee, or such other agent or official of the City as may be designated in a Series Ordinance to maintain on behalf of the City books of record in which the registered owners of the Bonds authorized by such Series Ordinance and their registered addresses shall be duly recorded.

**“Reimbursement Obligations”** means all Bonds or other obligations issued pursuant to **Section 3.04** hereof, whether issued in one or more Series, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds whether pursuant to **Article III, Section 4.06, Section 8.03** hereof or the Series Ordinance authorizing such Reimbursement Obligations.

**“Reserve Fund”** means the Reserve Fund established with the City pursuant to the provisions of **Section 5.02(b)(3)** hereof, in which there shall be established an account for each Series of Bonds issued pursuant to this Ordinance.

**“Reserve Requirement”** means, with respect to a Series of Bonds, an amount which is equal to the lower of (a) the maximum annual Debt Service requirements on such Series of Bonds, or (b) 125% of average annual Debt Service requirements on such Series of Bonds; provided that the amount required to be deposited into any account in the Reserve Fund in connection with the issuance of any Series of Bonds shall not exceed 10% of the original principal amount of such Series of Bonds (adjusted as required by the Code for any original issue discount or original issue premium).

**“Revenue Fund”** means the Solid Waste Management Revenue Fund created with the City pursuant to the provisions of **Section 5.02(a)** hereof, into which all of the Revenues of the Enterprise shall be deposited.

**“Revenues”** means (a) all income and revenues derived from the use or operation of the Enterprise, including investment and rental income, sale of useable materials and any net proceeds from business interruption insurance, plus (b) the proceeds of the occupation tax imposed by Section 8.32.150 of the Lincoln Municipal Code, plus (c) such other revenues and income as shall be determined to be appropriate in accordance with generally accepted accounting principles for proprietary governmental operations such as the Enterprise, but shall exclude any amounts received from the sale of assets of the Enterprise.

**“Securities Depository”** means, with respect to a Book-Entry Bond, the person, firm, association or corporation specified in the Series Ordinance authorizing the Bonds of the Series of which such Book-Entry Bond is a part to serve as the securities depository for such Book-Entry Bond, or its nominee, and its successor or successors and any other person, firm, association or corporation which may at any time be substituted in its place pursuant to the Ordinance or such Series Ordinance.

**“Serial Bonds”** means the Bonds, maturing in specified years, for which no Sinking Fund Installments are provided.

**“Series,”** whenever used herein with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as herein provided.

**“Series Ordinance”** means an ordinance adopted in compliance with the provision of **Articles III, IV and V** hereof providing for the issuance of a series of Bonds hereunder.

**“Sinking Fund Account”** means the account by that name established in the Bond Fund pursuant to the provisions of **Section 5.02(b)(1)** hereof.



**“Sinking Fund Installment”** means an amount so designated which is established pursuant to a Series Ordinance authorizing a Series of Bonds and which is required by this Ordinance to be deposited in the Sinking Fund Account Bond Fund for the payment of Term Bonds of such series and maturity.

**“Standard & Poor’s”** means Standard & Poor’s, a corporation, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City (other than Moody’s).

**“State”** means the State of Nebraska.

**“Subordinated Indebtedness”** means an evidence of indebtedness or obligation to pay money complying with the provisions of **Section 5.11**.

**“Supplemental Ordinance”** means an ordinance adopted in compliance with the provisions of **Article VIII** hereof amending or supplementing this Ordinance as originally adopted or as theretofore amended or supplemented by an ordinance adopted in compliance with the provisions of **Article VIII**, and, unless the context shall clearly indicate otherwise, shall include Series Ordinances.

**“Tax Certificate”** means the certificate dated as of the date of issuance, sale and delivery of a Series of Bonds concerning the requirements of the Internal Revenue Code of 1986, as amended, and any applicable regulations with respect to such Series of Bonds.

**“Term Bonds”** means Bonds payable at or before their specified maturity date or dates from Sinking Fund Installments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

**“United States”** means the United States of America.

**“Variable Rate Indebtedness”** means any indebtedness or obligation the interest rate on, or amount of, which is not fixed at the time of incurrence of such indebtedness or obligation, and has not at some subsequent date been fixed, at a single numerical rate for the entire remaining term of the indebtedness or obligation.

All references in this Ordinance to Articles, Sections, and other subdivisions are to the corresponding Articles, Sections or subdivisions of the Ordinance, and the words herein, hereof, hereunder and other words of similar import refer to the Ordinance as a whole and not to any particular Article, Section or subdivision of the Ordinance. The headings or title of the several articles and sections of the Ordinance, and any Table of Contents appended to copies of the Ordinance, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

**Section 1.03. Content of Certificates and Opinions.** Every certificate or opinion provided for in this Ordinance with respect to compliance with any provision hereof shall include (a) a statement that the Person making or giving such certificate or opinion has read such provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the certificate or opinion is based; (c) a statement (1) that, in the opinion of such Person, he or she has made or caused to be made such examination or investigation as is necessary to enable him or her to express an informed opinion with respect to the subject matter or (2) that he or she has made or caused to be made his or her examination or investigation with respect to the subject matter in accordance with

specified professional standards; and (d) a statement as to whether, in the opinion of such Person, there has been and is compliance with such provision.

Any such certificate or opinion made or given by an officer or employee of the City may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel, an accountant or an independent consultant, unless such officer or employee knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel, an accountant or an independent consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the City) upon a certificate or opinion of or representation by an officer or employee of the City, unless such counsel, accountant or independent consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such Person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer or employee of the City, or the same counsel or accountant or independent consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Ordinance, but different officers, employees, counsel, accountants or independent consultants may certify to different matters, respectively.

## ARTICLE II

### THE BONDS

**Section 2.01. Authorization of Bonds.** Bonds may be issued hereunder from time to time upon approval by the Mayor and Council. The maximum principal amount of Bonds which may be issued hereunder is not limited; subject, however, to the limitations contained in the Act and to the right of the Mayor and Council, which is hereby reserved, to limit the aggregate principal amount of Bonds which may be issued or outstanding hereunder. The Bonds are designated generally as "The City of Lincoln, Nebraska, Solid Waste Management Revenue Bonds," and each Series thereof shall bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Bonds. The Bonds may be issued in such Series as from time to time shall be established and authorized by the City, each such Series issued pursuant to a Series Ordinance and subject to the covenants, provisions and conditions therein and herein contained.

**Section 2.02. Terms of the Bonds; Sale of the Bonds.** The Bonds of each Series shall bear interest, if any, at such rate or rates or determined in such manner and payable at such intervals as may be determined by the Council and the Mayor at the time of issuance thereof pursuant to the Series Ordinance, not to exceed the maximum rate of interest permitted by law, and shall mature and become payable on such date or dates and in such year or years as the Council and the Mayor may determine by the Series Ordinance creating such Series. Principal, Accreted Value and Appreciated Value of and interest on such Bonds shall be payable in such manner as may be specified in the Series Ordinance creating such Series. The Bonds of each Series may be subject to mandatory or optional tender and purchase and/or redemption upon such terms and conditions and upon such notice and with such effect as provided in the Series Ordinance creating such Series. The Bonds of each Series may be sold at either negotiated or competitive sale, as the Council and the Mayor shall determine.

The Bonds of any Series may be issued in such denominations as provided by the Series Ordinance creating such Series, in fully registered form, with or without coupons or in fully registered book-entry form.

Nothing in the Ordinance shall be deemed to preclude or restrict the consolidation into a single Series for purposes of issuance and sale of Bonds otherwise permitted by the Ordinance to be issued at the same time in two or more separate Series, provided that solely for the purpose of satisfying the requirements of **Section 3.02**, **Section 3.03** or **Section 3.04** hereof, as the case may be, the Bonds otherwise permitted by the Ordinance to be issued as a separate Series shall be considered separately as if such Bonds were to be issued as a separate Series. In the event that separate Series are combined for purposes of issuance and sale, they may be issued under a single Series Ordinance notwithstanding any other provision of the Ordinance.

Nothing in this Ordinance shall be construed or interpreted as prohibiting the Finance Director when so authorized by the Council and the Mayor from fixing or determining any of the terms or provisions of any Series of Bonds specified in this **Section 2.02** in accordance with such terms and conditions as may be established by the Council and the Mayor.

**Section 2.03. Form of Bonds.** The Bonds of any Series shall be in such form or forms as may be specified in the Series Ordinance creating such Series.

**Section 2.04. Execution of Bonds.** Unless otherwise provided in the Series Ordinance providing for the issuance thereof, the Bonds of each Series shall be executed on behalf of the City by the Mayor or by such other officer as the City shall authorize and designate for the purpose. Such Bonds shall also be countersigned by the Finance Director. All such signatures and countersignatures on said Bonds may be manual or facsimile signatures in the form of printed, lithographed, or engraved signatures. In case any of such officers, whose signatures or countersignatures appear on the Bonds, shall cease to be such officer before the delivery of such Bonds to the purchaser, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until the delivery of such Bonds.

Except as provided in the Series Ordinance providing for the issuance thereof, only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form recited in the Series Ordinance creating such Series, manually executed by the Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance, and such certificate of authentication when manually executed by the Registrar shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Ordinance.

Notwithstanding the foregoing, the Bonds may be executed, countersigned, authenticated and printed in such other manner as may be authorized or permitted by the Act.

**Section 2.05. Transfer of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of **Section 2.07** hereof, by the Person in whose name it is registered, in Person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Registrar.

Whenever any Bond or Bonds of a Series shall be surrendered for transfer, the City shall execute and the Registrar shall authenticate and deliver a new Bond or Bonds, of the same Series, tenor and maturity and for a like aggregate principal amount; provided that, unless otherwise provided in any Series Ordinance, the Registrar is not required to register a transfer of any Bonds within 15 days before the date of selection of Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption.

The Registrar may require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

**Section 2.06. Exchange of Bonds.** Bonds of any Series may be exchanged at the designated office of the Registrar for a like aggregate principal amount of Bonds of other authorized denominations of the same Series, tenor and maturity; provided that, unless otherwise provided in any Series Ordinance, the Registrar is not required to exchange Bonds within 15 days before the date of selection of Bonds for redemption, or exchange any Bond or portion of a Bond so selected for redemption. The Registrar shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange.

**Section 2.07. Bond Register.** The Registrar will keep or cause to be kept at its designated office sufficient books for the registration and transfer of the Bonds of that Series, which shall at all times be open to inspection during normal business hours by the City; and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, Bonds as hereinbefore provided.

**Section 2.08. Temporary Bonds.** The Bonds may be issued in temporary form exchangeable for definitive Bonds when ready for delivery. Any temporary Bond may be printed, lithographed or typewritten, shall be of such denomination as may be determined by the City, shall be in registered form and may contain such reference to any of the provisions of this Ordinance as may be appropriate. A temporary Bond may be in the form of a single Bond payable in installments, each on the date, in the amount and at the rate of interest established for the Bonds maturing on such date. Every temporary Bond shall be executed by the City and authenticated by the Registrar upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds it will execute and deliver definitive Bonds as promptly thereafter as practicable, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the designated office of the Registrar and the Registrar shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations of the same Series, tenor and maturity or maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Ordinance as definitive Bonds authenticated and delivered hereunder.

**Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.** If any Bond shall become mutilated, the City at the expense of the Owner of said Bond, shall execute, and the Registrar shall thereupon authenticate and deliver, a new Bond of like tenor and amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Registrar of the Bond so mutilated. Every mutilated Bond so surrendered to the Registrar shall be cancelled by it and destroyed. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and the Registrar, and, if such evidence be satisfactory to both the Registrar and the City and indemnity satisfactory to them shall be given, the City at the expense of the Owner, shall execute, and the Registrar shall thereupon authenticate and deliver, a new Bond of like tenor and amount in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond, the Registrar may pay the same without surrender thereof upon receipt of the aforementioned indemnity). The City may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this **Section 2.09** and of the expenses that may be incurred by the City and the Registrar in the premises. Any Bond issued under the provisions of this **Section 2.09** in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute a contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Ordinance with all other Bonds secured by this Ordinance. Neither the City, nor any Fiduciary shall be

required to treat both the original Bond and any substitute Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and substitute Bond shall be treated as one and the same.

**Section 2.10. Book-Entry Bonds.** (a) Anything in the Ordinance to the contrary notwithstanding, if and to the extent provided in the Series Ordinance authorizing the Bonds of the Series of which such Bond is a part, any Bond may be authorized and issued as a Book-Entry Bond.

(b) For all purposes of the Ordinance, the Owner of a Book-Entry Bond shall be the Securities Depository therefor and neither the City nor any Fiduciary shall have any responsibility or obligation to the beneficial owner of such Bond or to any direct or indirect participant in such Securities Depository. Without limiting the generality of the foregoing, neither the City nor any Fiduciary shall have any responsibility or obligation to any such participant or to the beneficial owner of a Book-Entry Bond with respect to (1) the accuracy of the records of the Securities Depository or any participant with respect to any beneficial ownership interest in such Bond, (2) the delivery to any participant of the Securities Depository, the beneficial owner of such Bond or any other person, other than the Securities Depository, of any notice with respect to such Bond, including any notice of the redemption thereof, or (3) the payment to any participant of the Securities Depository, the beneficial owner of such Bond or any other person, other than the Securities Depository, of any amount with respect to the principal, Accreted Value, Appreciated Value or Redemption Price of, or interest on, such Bond. The City and the Fiduciaries may treat the Securities Depository therefor as, and deem such Securities Depository to be, the absolute owner of a Book-Entry Bond for all purposes whatsoever, including (A) payment of the principal, Accreted Value, Appreciated Value or Redemption Price of and interest on such Bond, (B) giving notices of redemption and of other matters with respect to such Bond, (C) registering transfers with respect to such Bond and (D) giving to the City any notice, consent, request or demand pursuant to the Ordinance for any purpose whatsoever. The Paying Agent shall pay the principal, Accreted Value, Appreciated Value or Redemption Price of and interest on a Book-Entry Bond only to or upon the order of the Securities Depository therefor, and all such payments shall be valid and effective to satisfy fully and discharge the City's obligations with respect to such principal, Accreted Value, Appreciated Value, or Redemption Price and interest, to the extent of the sum or sums so paid. Except as otherwise provided in **Section 2.10(d)** hereof or in any Series Ordinance authorizing a Book-Entry Bond, no person other than the Securities Depository shall receive a Bond or other instrument evidencing the City's obligation to make payments of the principal, Accreted Value, Appreciated Value or Redemption Price thereof, and interest thereon.

(c) The City, in its sole discretion and without the consent of any other person, may, by notice to the Fiduciaries and a Securities Depository, terminate the services of such Securities Depository with respect to the Book-Entry Bonds for which such Securities Depository serves as securities depository if the City determines that (1) the Securities Depository is unable to discharge its responsibilities with respect to such Bond or (2) a continuation of the requirement that all of the Bonds issued as Book-Entry Bonds be registered in the registration books of the City in the name of the Securities Depository is not in the best interests of the beneficial owners of such Bonds or of the City. Additional or other terms and provisions relating to the termination or resignation of a Securities Depository may be provided in the Series Ordinance authorizing a Book-Entry Bond.

(d) Upon the termination of the services of a Securities Depository with respect to a Book-Entry Bond pursuant to clause (2) of the first sentence of **Section 2.10(c)** hereof, such Bond shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository. Upon the termination of the services of a Securities Depository with respect to a

Book-Entry Bond pursuant to clause (1) of the first sentence of **Section 2.10(c)** hereof, the City may within 90 days thereafter appoint a substitute securities depository which, in the opinion of the City, is willing and able to undertake the functions of Securities Depository under the Ordinance upon reasonable and customary terms. If no such successor can be found within such period, such Book-Entry Bond shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository. In the event that Book-Entry Bond shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository, the City shall execute and the Registrar shall authenticate and deliver, upon presentation and surrender of the book Entry Bond, Bond certificates as requested by the Securities Depository so terminated of like Series, principal amount, maturity and interest rate, in authorized denominations, to the identifiable beneficial owners in replacement of such beneficial owners' beneficial ownership interests in such Book-Entry Bond.

(e) Anything in the Ordinance to the contrary notwithstanding, payment of the Redemption Price of a Book-Entry Bond, or portion thereof, called for redemption prior to maturity may be paid to the Securities Depository by check or draft mailed to the Securities Depository or by wire transfer. Anything in the Ordinance to the contrary notwithstanding, such Redemption Price may be paid without presentation and surrender to the Paying Agent of the Book-Entry Bond, or portion thereof, called for redemption; provided, however, that payment of (1) the principal, Accreted Value or Appreciated Value payable at maturity of a Book-Entry Bond and (2) the Redemption Price of a Book-Entry Bond as to which the entire principal amount thereof has been called for redemption shall be payable only upon presentation and surrender of such Book-Entry Bond to the Paying Agent; and provided, further, that no such Redemption Price shall be so payable without presentation and surrender unless such Book-Entry Bond shall contain or have endorsed thereon a legend to the following effect (or such other legend of similar content as may be specified in the Series Ordinance authorizing the Series of Bonds of which such Book-Entry Bond is a part):

“AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY TRANSFERS THROUGH [NAME OF SECURITIES DEPOSITORY] (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, “[NAME OF SECURITIES DEPOSITORY]”), AND NOTWITHSTANDING ANY OTHER PROVISION OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR, THE PAYING AGENT, [NAME OF SECURITIES DEPOSITORY] OR A NOMINEE TRANSFEREE OR ASSIGNEE OF [NAME OF SECURITIES DEPOSITORY] OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. SUCH PRINCIPAL AMOUNT OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF [NAME OF SECURITIES DEPOSITORY] (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT FOR PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE HEREOF, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF [NAME OF SECURITIES DEPOSITORY OR ITS NOMINEE] OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF [NAME OF SECURITIES DEPOSITORY] AND ANY

PAYMENT IS MADE TO [NAME OF SECURITIES DEPOSITORY] OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, [NAME OF SECURITIES DEPOSITORY OR ITS NOMINEE], HAS AN INTEREST HEREIN.”

Anything in the Ordinance to the contrary notwithstanding, upon any such payment to the Securities Depository without presentation and surrender, for all purposes of (A) the Book-Entry Bond as to which such payment has been made and (B) the Ordinance, the unpaid principal amount, Accreted Value or Appreciated Value of such Book-Entry Bond Outstanding shall be reduced automatically by the principal amount, Accreted Value or Appreciated Value so paid.

(f) For all purposes of the Ordinance authorizing or permitting the purchase of Bonds, or portions thereof, by, or for the account of, the City for cancellation, and anything in the Ordinance to the contrary notwithstanding, a portion of a Book-Entry Bond may be deemed to have been purchased and cancelled without surrender thereof upon delivery to the Fiduciaries of a certificate executed by the City and a participant of the Securities Depository therefor to the effect that a beneficial ownership interest in such Bond, in the principal amount, Accreted Value or Appreciated Value stated therein, has been purchased by, or for the account of the City through the participant of the Securities Depository executing such certificate; provided, however, that any purchase for cancellation of the entire principal amount, Accreted Value or Appreciated Value of a Book-Entry Bond shall be effective for purposes of the Ordinance only upon surrender of such Book-Entry Bond to the Paying Agent; and provided, further, that no portion of a Book-Entry Bond may be deemed to have been so purchased and cancelled without surrender thereof unless such Book-Entry Bond shall contain or have endorsed thereon the legend referred to in **Section 2.10(e)** hereof. Anything in the Ordinance to the contrary notwithstanding, upon delivery of any such certificate to the Fiduciaries, for all purposes of (1) the Book-Entry Bond to which such certificate relates and (2) the Ordinance, the unpaid principal amount, Accreted Value or Appreciated Value of such Book-Entry Bond Outstanding shall be reduced automatically by the principal amount, Accreted Value or Appreciated Value so purchased.

(g) Anything in the Ordinance to the contrary notwithstanding, a Securities Depository may make a notation on a Book-Entry Bond (1) redeemed in part or (2) purchased by, or for the account of, the City in part for cancellation, to reflect, for informational purposes only, the date of such redemption or purchase and the principal amount, Accreted Value or Appreciated Value thereof redeemed or deemed cancelled, but failure to make any such notation shall not affect the automatic reduction of the principal amount, Accreted Value or Appreciated Value of such Book-Entry Bond Outstanding as provided in **Sections 2.10(e)** or **(f)** hereof, as the case may be.

(h) Anything in the Ordinance to the contrary notwithstanding, in the case of a Book-Entry Bond, the City shall be authorized to defease, redeem or purchase (by or for the account of the City), or issue Refunding Bonds to refund, less than all of the entire Outstanding principal amount, Accreted Value or Appreciated Value thereof (in portions thereof of \$5,000 or integral multiples thereof, or such other denominations as shall be specified in the Series Ordinance authorizing such Book-Entry Bond), and in the event of such partial defeasance, redemption, purchase or refunding, the provisions of the Ordinance relating to the defeasance, redemption, purchase or refunding of a Bond or Bonds shall be deemed to refer to the defeasance, redemption, purchase or refunding of a portion of a Bond.

### ARTICLE III

## ISSUANCE OF BONDS

**Section 3.01. Series of Bonds; Terms of Series Ordinances.** The City may from time to time by Series Ordinance establish one or more Series of Bonds, and the City may issue, and the Registrar may authenticate and deliver to the purchasers thereof, Bonds of any Series so established, in such principal amount as shall be determined by the City, but only upon compliance by the City with the provisions of this Ordinance and any additional requirements set forth in said Series Ordinance.

A Series Ordinance authorizing a Series of Bonds shall specify or provide for the determination of, among other things: (a) the authorized principal amount and distinguishing designation of such series; (b) the general purpose or purposes for which such Series of Bonds is being issued, and the deposit, disbursement and application of the proceeds of the sale of the Bonds of such Series; (c) the date or dates, and the maturity date or dates of the Bonds of such Series, and the principal amount maturing on each maturity date and any Sinking Fund Installments for the Bonds of such Series; (d) the interest rate or rates on the Bonds of such Series (which may be a rate of zero) and the interest Payment Date or dates therefor, and whether such interest rate or rates shall be fixed, variable or a combination of both, and, if Deferred Interest Bonds are authorized by such Series Ordinance, the Current Interest Commencement Date and, if necessary, the manner of determining such rate or rates; (e) the denominations of, and the manner of dating, numbering, and, if necessary, authenticating, the Bonds of such Series; (f) the Registrar and the Paying Agent(s) for the Bonds of such Series and the duties and obligations thereof; (g) the place or places of payment of the principal, Redemption Price, if any, or purchase price, if any, or the interest on, the Bonds of such Series; (h) the trustee, if any, for the Bonds of such Series, and the duties and obligations thereof; (i) the tender agent or tender agents for the Bonds of such Series, if any, and the duties and obligations thereof; (j) the remarketing agent or remarketing agents for the Bonds of such Series, if any, and the duties and obligations thereof; (k) the form or forms of the Bonds of such Series and any coupons attached thereto, which may include but shall not be limited to, registered form and book-entry form, and the methods, if necessary, for the registration, transfer and exchange of the Bonds of such Series; (l) the terms and conditions, if any, for the redemption of the Bonds of such Series prior to maturity, including the redemption date or dates, the redemption price or prices and other applicable redemption terms; (m) the terms and conditions, if any, for the purchase of the Bonds of such Series upon any optional or mandatory tender for purchase prior to maturity, including the tender date or dates, the purchase date or dates, the purchase price or prices and other applicable terms; (n) the authorization of and any terms and conditions with respect to any Credit Facility, if any, for the Bonds of such Series and the pledge or provision of money, assets or security other than Net Revenues to or for the payment of the Bonds of such Series or any portion thereof; (o) the creation and maintenance of one or more special funds or accounts, if any, to provide for the payment or purchase of the Bonds of such Series and any other special funds or accounts, if any, including, without limitation, a reserve fund or account, for the Bonds of such Series and the application of money therein; and (p) any other provisions deemed necessary or desirable in connection with the Bonds of such Series not inconsistent with the terms of this Ordinance.

**Section 3.02. General Provisions for the Issuance of Bonds.** The Bonds of each Series shall be executed by the City for issuance under this Ordinance and delivered to the Registrar and thereupon authenticated by the Registrar and delivered to the City on its order, but only upon receipt by the Fiduciaries of the following:

(a) A copy of this Ordinance, including the Series Ordinance creating such Series, certified by the City Clerk;



(b) An Opinion of Bond Counsel to the effect that (1) the Bonds of such Series are valid and binding limited obligations of the City enforceable against the City in accordance with their terms, and (2) that the Ordinance, including the Series Ordinance creating such Series, is a valid and binding obligation of the City enforceable in accordance with its terms; provided that such opinions may be qualified to the extent that the enforceability of the Bonds and the Ordinance, including the Series Ordinance creating such Series, may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;

(c) A written order of the City as to the delivery of such Series of Bonds signed by an Authorized Representative;

(d) The amount, if any, required by the Series Ordinance to be deposited in the Bond Fund for the payment of interest on the Bonds; and

(e) A Certificate of the City stating that (1) no default will be continuing under this Ordinance after the issuance of such Series of Bonds and (2) the issuance of such Series of Bonds will not cause a default under this Ordinance.

**Section 3.03. Issuance of Refunding Bonds.** (a) Refunding Bonds may be authorized and issued by the City in an aggregate principal amount sufficient (together with any additional funds available or to become available) to provide funds for the payment of any or all of the following:

(1) The principal or Redemption Price of the Outstanding Bonds to be refunded;

(2) All expenses incident to the calling, retiring or paying of such Outstanding Bonds and the costs of issuing such Refunding Bonds;

(3) Interest on all Outstanding Bonds to be refunded to the date such Bonds will be called for redemption or paid at maturity; and

(4) Interest on the Refunding Bonds from the date thereof to the date of payment or redemption of the Bonds to be refunded.

(b) A Series of Refunding Bonds may be executed by the City for issuance under this Ordinance and delivered to the Registrar and thereupon authenticated by the Registrar and delivered to the City or upon its order, but only upon receipt by the Registrar of the documents required by **Section 3.02** hereof and, if any of the Bonds to be refunded are to be redeemed or prepaid prior to their stated maturity dates, in the case of Bonds, irrevocable instructions from the City to give the applicable notice of redemption or a waiver of the notice of redemption signed by the Owners of all or the portion of such Bonds to be redeemed, or proof that such notice has been given by the City; provided, however, that no provision of this Ordinance shall be construed to require the redemption of Bonds prior to their respective maturity dates in connection with the refunding thereof.

**Section 3.04. Reimbursement Obligations.** One or more Series of Reimbursement Obligations may be issued concurrently with the issuance of the Bonds of a Series authorized pursuant to the provisions of **Section 3.02** or **3.03** hereof for which a Credit Facility is being provided with respect to such Bonds (or a maturity or maturities thereof) by a third party. Such Reimbursement Obligations shall be issued for the purpose of evidencing the City's obligation to repay any advances or loans made to, or on behalf of, the City in connection with such Credit Facility; provided, however, that the stated maximum principal amount of any such Series of Reimbursement Obligations shall not exceed the

aggregate principal amount of the Bonds with respect to which such Credit Facility is being provided, and such number of days' interest thereon as the City shall determine prior to the issuance thereof, but not in excess of 366 days' interest thereon, computed at the maximum interest rate applicable thereto.

**Section 3.05. Special Provisions Relating to Capital Appreciation Bonds, Deferred Income Bonds and Reimbursement Obligations.** (a) The principal and interest portions of the Accreted Value of Capital Appreciation Bonds or the Appreciated Value of Deferred Income Bonds becoming due at maturity or by virtue of a Sinking Fund Installment shall be included in the calculations of accrued and unpaid and accruing interest or Principal Installments made under the definitions of Debt Service and Aggregate Debt Service only from and after the date (the "**Calculation Date**") which is one year prior to the date on which such Accreted Value or Appreciated Value, as the case may be, becomes so due, and the principal and interest portions of such Accreted Value or Appreciated Value shall be deemed to accrue in equal daily installments from the Calculation Date to such due date.

(b) For the purposes of (1) receiving payment of the Redemption Price if a Capital Appreciation Bond is redeemed prior to maturity, or (2) receiving payment of a Capital Appreciation Bond if the principal of all Bonds is declared immediately due and payable following an Event of Default, as provided in **Section 10.02** hereof or (3) computing the principal amount of Bonds held by the Owner of a Capital Appreciation Bond in giving to the City or any Fiduciary any notice, consent, request, or demand pursuant to this Ordinance for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its then current Accreted Value.

(c) For the purposes of (1) receiving payment of the Redemption Price if a Deferred Income Bond is redeemed prior to maturity, or (2) receiving payment of a Deferred Income Bond if the principal of all Bonds is declared immediately due and payable following an Event of Default, as provided in **Section 10.02** hereof or (3) computing the principal amount of Bonds held by the Owner of a Deferred Income Bond in giving to the City or any Fiduciary any notice, consent, request, or demand pursuant to this Ordinance for any purpose whatsoever, the principal amount of a Deferred Income Bond shall be deemed to be its then current Appreciated Value.

(d) Except as otherwise provided in a Series Ordinance authorizing a Series of Reimbursement Obligations, for the purposes of (1) receiving payment of a Reimbursement Obligation, whether at maturity, upon redemption or if the principal of all Bonds is declared immediately due and payable following an Event of Default, as provided in **Section 10.02** hereof or (2) computing the principal amount of Bonds held by the Owner of a Reimbursement Obligation in giving to the City or any Fiduciary any notice, consent, request, or demand pursuant to this Ordinance for any purpose whatsoever, the principal amount of a Reimbursement Obligation shall be deemed to be the actual principal amount that the City shall owe thereon, which shall equal the aggregate of the amounts advanced to, or on behalf of, the City in connection with the Bonds of the Series or maturity for which such Reimbursement Obligation has been issued to evidence the City's obligation to repay any advances or loans made in respect of the Credit Facility provided for such Bonds, less any prior repayments thereof.

**Section 3.06. Application of Proceeds.** Proceeds of each Series of Bonds shall be applied as specified in the Series Ordinance pursuant to which such Series of Bonds is created. All Bonds paid, purchased, redeemed or retired by use of funds received from the sale of Refunding Bonds, and all Bonds surrendered to the Registrar against the issuance of Refunding Bonds, shall be forthwith cancelled and shall not be reissued.

## ARTICLE IV

### REDEMPTION OF BONDS

**Section 4.01. Terms of Redemption.** Each Series of Bonds may be made subject to redemption prior to its respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions and upon such notice and with such effect as may be provided in the Series Ordinance creating such Series of Bonds.

**Section 4.02. Redemption at the Direction of the City.** In the case of any redemption of Bonds at the direction of the City, the City will select the Series, maturities and principal amounts thereof to be redeemed and the Finance Director shall give written notice to the Fiduciaries specifying the redemption date and the maturities and Redemption Prices of such Series to be redeemed, and directing the Registrar to give notice of redemption to the Owners of Bonds selected for redemption. The City shall give such notice at least 15 Business Days (or such shorter period as may be agreed to by the Registrar) before the last day on which the Registrar may give notice of redemption to the Owners of the Bonds of that Series.

**Section 4.03. Redemption Other than at the City's Direction.** Whenever by the terms of the Series Ordinance pursuant to which any Series of Bonds is issued the Registrar is required or authorized to redeem Bonds otherwise than at the direction of the City, the Registrar shall, subject to receipt of any notice from the City pursuant to **Section 4.04** hereof, select the Bonds to be redeemed and shall give the notice of redemption.

**Section 4.04. Selection of Bonds to be Redeemed.** Except as otherwise provided in a Series Ordinance creating a Series of Bonds, if less than all Bonds of that Series are to be redeemed, the maturities of Bonds to be redeemed may be selected by the City. The City shall give written notice of its selection not later than 15 Business Days (or such shorter period as may be agreed to by the Registrar) before the last day on which the Registrar may give notice of redemption to the Owners of the Bonds of that Series. If the City does not give notice of its selection, the Registrar shall, unless otherwise provided in the Series Ordinance creating such Series of Bonds, select the Bonds to be redeemed in inverse order of maturity. Except as otherwise provided in a Series Ordinance creating a Series of Bonds, if less than all of the Bonds of like maturity of that Series are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Registrar in such manner as the Registrar in its discretion may deem fair and appropriate.

**Section 4.05. Notice of Redemption.** Unless otherwise specified in a Series Ordinance creating a Series of Bonds, each notice of redemption of Bonds of any Series shall be mailed by first class mail by the Registrar, not less than 30 days prior to the redemption date, to each Owner whose Bonds are called for redemption. Notice of redemption shall state the date of such notice, the distinguishing designation of the Series of Bonds to which such notice relates, the date of issue of such Series of Bonds, the redemption date, the Redemption Price, the place or places of redemption (including the name and appropriate address or addresses of the Fiduciaries), the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity, the distinctive certificate numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said Bonds the Redemption Price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered at the address or addresses of the Paying Agent specified in the redemption notice. Neither the City nor any Fiduciary shall have any

responsibility for any defect in the CUSIP number that appears on any Bond or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the City nor any Fiduciary shall be liable for any inaccuracy in such numbers.

Failure of any owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

**Section 4.06. Payment of Redeemed Bonds.** Notice having been given in the manner provided in **Section 4.05** hereof, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, if presentation and surrender thereof are required hereby, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the Redemption Price, plus interest accrued and unpaid to the redemption date. If there shall be drawn for redemption a portion of a Bond, if presentation and surrender thereof are required hereby, the City shall execute and the Registrar shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, a Bond of like Series and maturity in any authorized denomination. If, on the redemption date, money for the redemption of all the Bonds or portions thereof of any like Series and maturity to be redeemed, together with interest to the redemption date, shall be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Bonds or portion thereof of such Series and maturity so called for redemption shall cease to accrue and become payable. If said money shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

**Section 4.07. Cancellation and Destruction of Bonds.** Except as may be otherwise provided with respect to Option Bonds in the Series Ordinance providing for the issuance thereof and except as otherwise provided in **Section 2.10** hereof with respect to Book-Entry Bonds, all Bonds paid or redeemed, either at or before maturity, shall be delivered to the Paying Agent when such payment or redemption is made, and such Bonds, together with all Bonds purchased which have been delivered to the Paying Agent for application as a credit against Sinking Fund Installments and all Bonds purchased by the Paying Agent, shall thereupon promptly be cancelled. Bonds so cancelled may at any time be destroyed by the Paying Agent, who shall execute a certificate of destruction in triplicate by the signature of one of its authorized officers describing the Bonds so destroyed, and one executed certificate shall be filed with the City, one filed with the Registrar, and the other executed certificate shall be retained by the Paying Agent.

## **ARTICLE V**

### **REVENUES**

**Section 5.01. Pledge Effected by this Ordinance.** (a) The Bonds of each Series are special, limited revenue obligations of the City and are secured by a pledge of and shall be a charge upon and shall be payable, as to the principal, Accreted Value and Appreciated Value thereof, interest thereon, and any premiums upon redemption thereof, solely from and secured by a lien upon (1) the Net Revenues and (2) the other funds, assets and security described hereunder and under the Series Ordinance creating such Series. The City hereby pledges and places a charge upon all Net Revenues to secure the payment of the principal, Accreted Value and Appreciated Value of, premium, if any, and interest on the Bonds in

accordance with their respective terms without priority or distinction of one over the other, subject only to the provisions of this Ordinance, permitting the application thereof for the purposes and on the terms and conditions set forth herein, and the Net Revenues constitute a trust for the security and payment of the interest and any premium on and principal, Accreted Value and Appreciated Value of the Bonds. There are hereby pledged to secure the payment of the principal, Accreted Value and Appreciated Value of and premium, if any, and interest on the Bonds in accordance with their terms all amounts (including proceeds of the Bonds) held by the City in the Bond Fund and the Reserve Fund, subject only to the provisions of this Ordinance permitting the application thereof for the purposes and on the terms and conditions set forth herein. The pledge of Net Revenues herein made shall remain in effect until there are no Bonds Outstanding.

(b) In consideration of the acceptance of the Bonds by the Owners thereof from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds, without preference, priority or distinction as to security or otherwise of any Bond over any other Bond by reason of the Series, time of issue, sale or negotiation thereof or for any cause whatsoever, except as expressly provided therein or herein. Notwithstanding the foregoing, nothing herein shall prevent additional security being provided to particular Bonds under any Series Ordinance.

(c) The Bonds shall be payable, as to principal, Accreted Value and Appreciated Value or Redemption Price thereof, and interest thereon, solely from the Net Revenues and other funds of the City as provided in the Ordinance and neither the State nor any political subdivision (other than the City) shall be obligated to pay the principal, Accreted Value and Appreciated Value or Redemption Price thereof or interest thereon and neither the faith and credit nor the taxing power of the State or any political subdivision thereof (including the City), except the occupation tax imposed by the City pursuant to Section 8.32.150, is pledged to the payment of the principal, Accreted Value and Appreciated Value or Redemption Price of, or interest on, the Bonds. No Owner or receiver or trustee in connection with the payment of the Bonds shall have any right to compel the State or any political subdivision thereof to exercise its appropriation or taxing powers, except he .

**Section 5.02. Establishment of Funds and Accounts; Application.** (a) There is hereby established with the City the Solid Waste Management Revenue Fund into which all Revenues of the Enterprise shall be deposited. All Revenues of the Enterprise shall be collected on each Business Day of the City by or for the account of the City and deposited as promptly as practicable after the receipt thereof in the Revenue Fund. Earnings on and the income from the investment of money shall be deposited in such funds as are required by **Section 6.03** hereof. The Revenue Fund and the money deposited therein shall be used and applied only for (1) the payment of Operation and Maintenance Expenses and (2) the other uses and purposes in the manner and for the purposes hereinafter provided.

(b) In addition to the Revenue Fund, the following funds and accounts, to be held by the City, are hereby established:

- (1) Bond Fund, in which there is hereby established an Interest Account, a Principal Account and a Sinking Fund Account;
- (2) Reserve Fund, in which there shall be established an account for each Series of Bonds issued pursuant to the Ordinance;
- (3) Rebate Fund; and

(4) Construction Fund

(c) At any time and from time to time, there may be established such other funds and accounts as the City shall determine to be necessary, desirable, advisable or in the best interests of City for such purposes as the City shall determine. The entity that shall hold any such account or fund, the amounts to be deposited therein, the purposes to which amounts therein are to be applied, and any other matters and things relative to such account or fund which are not contrary to or inconsistent with this Ordinance as theretofore in effect, shall be set forth in such resolution or Supplemental Ordinance establishing such account or fund or any Supplemental Ordinance thereafter adopted in connection therewith in accordance with **Section 8.01(b)(8)** hereof.

**Section 5.03. Solid Waste Management Revenue Fund.** The City covenants and agrees that from and after the delivery of the initial Series of Bonds issued hereunder, and continuing so long as any Bonds remain Outstanding, all of the Revenues derived and collected from the operation of the Enterprise shall as and when received be paid and deposited into the Revenue Fund. The Revenues shall be segregated and kept separate and apart from all other money, revenues, funds and accounts of the City and shall not be commingled with any other money, revenues, funds and accounts of the City. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Ordinance.

**Section 5.04. Application of Money in Funds.** Subject to the provisions of **Section 5.02(a)** hereof, the City covenants and agrees that from and after the delivery of the initial Series of Bonds hereunder and continuing so long as any Bonds shall remain Outstanding, it will on the first day of each month administer and allocate all of the money then held in the Revenue Fund as follows:

(a) **Operation and Maintenance.** All Operation and Maintenance Expenses shall be paid out of the Revenue Fund as and when due and payable. The Treasurer shall determine the amount reasonably necessary to be retained in the Revenue Fund to pay Operation and Maintenance Expenses for the remainder of such month.

(b) **Bond Fund.** There shall next be paid and credited monthly to the Interest Account, the Principal Account and the Sinking Fund Account in the Bond Fund, an amount such that if the same amount were deposited on the first day of each month thereafter, the balance on the next succeeding Payment Date (a) of the Interest Account would be sufficient to pay the interest due on the Bonds, (b) the Principal Account would be sufficient to pay the principal amount maturing with respect to the Bonds, and (c) the Sinking Fund Account would be sufficient to pay any Sinking Fund Installment (or any unsatisfied balance thereof) due with respect to the Bonds. Any amounts deposited in the Interest Account as accrued interest or as capitalized interest in accordance with a Series Ordinance shall be credited against the City's payment obligations as set forth in this **Section 5.04(b)**.

(c) **Reserve Fund.** After all payments and credits required at the time to be made under the provisions of **Sections 5.04(a)** and **(b)** hereof have been made, there shall next be paid and credited to each Account established in the Reserve Fund, all remaining Revenues until the amount on deposit in each Account in the Reserve Fund aggregates the Reserve Requirement for the Series of Bonds for which such Account was established. So long as each Account in the Reserve Fund aggregates the Reserve Requirement with respect to the Series of Bonds for which such Account was established, no further payments into said Account shall be required, but if the City is ever required to expend and use a part of the money in any Account for the purpose herein

authorized and such expenditure reduces the amount of said Account below the Reserve Requirement for the Series of Bonds for which such Account was established, the City shall resume and continue such monthly payments into said Account until such Account shall again aggregate the Reserve Requirement with respect to the Series of Bonds for which such Account was established.

(d) ***Deficiency of Payments into Funds or Accounts.*** If at any time the Revenues derived from the operation of the Enterprise are insufficient to make any payment on the date or dates hereinbefore specified, the City will make good the amount of such deficiency by making additional payments or credits out of the first available Revenues thereafter received from the operation of the Enterprise, such payments and credits being made and applied in the order hereinbefore specified in this **Section 504**.

**Section 5.05. Bond Fund.** (a) The City shall pay to the respective Paying Agents not less than three Business Days before (1) each Payment Date for any of the Bonds (A) from the Interest Account, the amount required to pay the interest then due on the Bonds, (B) from the Principal Account, the amount required to pay any principal then maturing with respect to the Bonds, and (C) from the Sinking Fund Account, the amount required to pay any Sinking Fund Installment (including any unsatisfied balance thereof) the due with respect to the Bonds; and (2) before any redemption date for the Bonds, the amount required for the payment of interest on and the Redemption Price of the Bonds then to be redeemed. Such amounts shall be applied by the Paying Agents on the due dates thereof. The City shall also pay out of the Interest Account the accrued interest included in the purchase price of the Bonds purchased for retirement.

(b) Amounts accumulated in the Sinking Fund Account (together with amounts accumulated in the Interest Account with respect to interest on the Bonds for which such Sinking Fund Installment was established) may be applied by the City to (1) the purchase of Bonds of the Series, maturity and interest rate within each maturity for which such Sinking Fund Installment was established, (2) the redemption at the applicable sinking fund Redemption Price of such Bonds, if then redeemable by their terms, or (3) the purchase of Bonds of the Series, maturity and interest rate within each maturity for which such Sinking Fund Installment was established in an amount not exceeding that necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment. All purchases of any Bonds pursuant to this **Section 5.05(b)** shall be made at prices not exceeding the applicable sinking fund Redemption Price of such Bonds plus accrued interest, and such purchases shall be made by the City. The applicable sinking fund Redemption Price (or principal amount of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the Sinking Fund Account until such Sinking Fund Installment date, for the purpose of calculating the amount of such Account. At the direction of the City, the Registrar shall proceed to call for redemption, by giving notice as provided in **Section 4.05** hereof, on such due date Bonds of the Series, maturity and interest rate within such maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment after making allowance for any Bonds purchased or redeemed which the City has applied as a credit against such Sinking Fund Installment as provided in **Section 5.05(e)** hereof. The City shall pay out of the Sinking Fund Account and the Interest Account to the appropriate Paying Agent(s), on or before such redemption date (or maturity date), the amount required for the redemption of the Bonds so called for redemption (or for the payment of such Bonds then maturing), and such amount shall be applied by such Paying Agent(s) to such redemption (or payment). All expenses in connection with the purchase or redemption of Bonds shall be paid by the City from the Revenue Fund. Any purchase of Bonds pursuant to this **Section 5.05(b)** may be made with or without tenders of Bonds and at either public or private sale, in such manner as the City may determine.

(c) The amount, if any, deposited in the Bond Fund from the proceeds of each Series of Bonds shall be set aside in the Bond Fund and applied to the payment of interest on Bonds in accordance with the Series Ordinance pursuant to which such Series of Bonds were authorized. The amount, if any, deposited in the Bond Fund from the proceeds of Subordinated Indebtedness or other evidences of indebtedness of the City shall be set aside in the Bond Fund and applied to the payment of interest on Bonds in accordance with the Series Ordinance authorizing such Subordinated Indebtedness.

(d) In the event of the refunding or defeasance of any Bonds, the City shall withdraw from the Bond Fund all or any portion of the amounts accumulated therein allocable to such Bonds and deposit such amounts with the Paying Agent(s) to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded; provided that such withdrawal shall not be made unless immediately thereafter the Bonds being refunded shall be deemed to have been paid pursuant to **Section 9.03** hereof. In the event of such refunding or defeasance, the City may also withdraw from the Bond Fund all or any portion of the amounts accumulated therein allocable to such Bonds and deposit such amounts in any fund or account established under this Ordinance; provided that such withdrawal shall not be made unless the requirements of the first sentence of this **Section 5.06(d)** have been satisfied.

(e) If at any time Bonds of any Series or maturity for which Sinking Fund Installments shall have been established are (1) purchased or redeemed other than pursuant to **Section 5.05(b)** hereof or (2) deemed to have been paid pursuant to **Section 9.03** hereof and, with respect to such Bonds which have been deemed paid, irrevocable instructions have been given to the Paying Agent to redeem or purchase the same on or prior to the due date of the Sinking Fund Installment to be credited under this **Section 5.05(e)**, the City may from time to time or at any time by written notice to the Registrar specify the portion, if any, of such Bonds so purchased, redeemed or deemed to have been paid and not previously applied as a credit against any Sinking Fund Installments which are to be credited against future Sinking Fund Installments. Such notice shall specify the amounts of such Bonds to be applied as a credit against such Sinking Fund Installment or Installments and the particular Sinking Fund Installment or Installments against which such Bonds are to be applied as a credit; provided, however, that none of such Bonds may be applied as a credit against a Sinking Fund Installment to become due less than 45 days after such notice is delivered to the Registrar. Except as otherwise provided in **Section 2.10** hereof with respect to Book-Entry Bonds, all such Bonds to be applied as a credit shall be surrendered to the Paying Agent for cancellation on or prior to the due date of the Sinking Fund Installment against which they are being applied as a credit. The portion of any such Sinking Fund Installment remaining after the deduction of any such amounts credited toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

**Section 5.06. Reserve Fund.** (a) The City shall establish a debt service reserve account (each, an “**Account**”) within the Reserve Fund for each Series of Bonds issued pursuant to this Ordinance which shall be for the benefit and security of such Series of Bonds. The City shall hold any such Account and shall deposit therein from the proceeds of the Series of Bonds for which such Account is established or from other funds of the City legally available therefore, an amount equal to the Reserve Requirement for such Series of Bonds.

(b) If any withdrawal from any Account in the Reserve Fund is made for the purpose of **Section 5.06(c)(1)** hereof, the amount of such withdrawal shall be restored by the City in no more than 12 substantially equal, consecutive, monthly installments, each payable on the last Business Day of the month, commencing with the month in which the withdrawal is made; provided that, if any withdrawal is



made and if, prior to the restoration of the amount withdrawn, an additional withdrawal is made, such additional withdrawal shall be restored in equal monthly installments over the remainder of the restoration period for the initial withdrawal.

(c) Money on deposit in any Account in the Reserve Fund shall be applied as follows:

(1) On the date of each required payment from the Bond Fund with respect to a Series of Bonds, money in the Account established in the Reserve Fund with respect to such Series of Bonds shall be applied to cure any deficiency in the Bond Fund with respect thereto.

(2) Any amount in any Account in the Reserve Fund in excess of the Reserve Requirement with respect to the Series of Bonds for which such Account was established shall be transferred to the Bond Fund and credited against the payments of the principal and interest next becoming due on such Series of Bonds.

(3) On the interest Payment Date immediately preceding the final maturity date of a Series of Bonds, money held in the Account established in the Reserve Fund with respect to such Series of Bonds shall be deposited into the Bond Fund and credited against the deposits required to be made into the Bond Fund with respect to such Series of Bonds but only to the extent that, immediately following such crediting and transfer, the amount on deposit in such Account in the Reserve Fund is equal to the lesser of (A) the Reserve Requirement with respect to such Series of Bonds and (B) the amount of principal and interest due in respect of such Series of Bonds on such final maturity date.

(d) The City shall be permitted to substitute a Credit Facility for funds on deposit in any Account in the Reserve Fund, provided that:

(1) the Credit Facility (including any replacement Credit Facility) is issued by a bank, trust company, national banking association or insurance company whose unsecured long term debt obligations (in the case of a bank, trust company or national banking association) or whose claims paying abilities (in the case of an insurance company) are rated not lower than the "AAA" Rating Category by a Rating Agency at the time the Credit Facility is issued and at the time of each extension or renewal thereof;

(2) the issuer of the Credit Facility does receive as security for any reimbursement obligation in respect of the Credit Facility a lien solely on the Net Revenues on a parity with any Bonds then Outstanding; and

(3) the Credit Facility (including any replacement Credit Facility, if provided by a different issuer) has an initial term of not less than one year and any extension, renewal or replacement (if provided by the same issuer) thereof has a term of not less than one year.

Upon such substitution, funds on deposit in any Account in the Reserve Fund which, when added to the face amount of the Credit Facility, exceed the Reserve Requirement on the Bonds for which such Account was established, shall be applied as provided in **Section 5.06(c)(2)** hereof (subject to yield restriction, if any, as determined by Bond Counsel). Thereafter, the Credit Facility shall be considered a part of such Account in the Reserve Fund and the amount available thereunder shall be included in any calculations of the amount required to be retained in such Account; provided that, (A) if the sum of the amount available under the Credit Facility and the amount of money on deposit in such Account in the Reserve Fund exceed the amount required to be on deposit pursuant to **Section 5.06(a)** hereof, the City

shall be permitted (A) to cause the amount available under the Credit Facility to be reduced by an amount equal to such excess, or (B) to direct that the excess money be applied as permitted under **Section 5.06(d)(2)** hereof, and (B) if the Credit Facility is not extended, renewed or replaced at least six months prior to its scheduled expiration or termination date, the City shall be obligated to restore the difference between the Reserve Requirement and the value of such Account in the Reserve Fund computed without regard to the Credit Facility prior to the expiration or termination date of such Credit Facility.

**Section 5.07. Rebate Fund.** (a) There shall be deposited into the Rebate Fund such amounts as are required to be deposited therein pursuant to the Arbitrage Instructions. All money in the Rebate Fund shall be held in trust, to the extent required to satisfy the Rebate Amount (as defined in the Arbitrage Instructions), for payment to the United States, and neither the City nor the Registered Owner of any Bond shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this **Section 5.08** and the Arbitrage Instructions.

(b) The City shall periodically determine the rebatable arbitrage under Section 148(f) of the Code in accordance with the Arbitrage Instructions, and the City shall make payments to the United States Government at the times and in the amounts determined under the Arbitrage Instructions. Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and the interest thereon, and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be released to the City.

(c) Notwithstanding any other provision of this Ordinance, including in particular **Article XI** hereof, the obligation to pay rebatable arbitrage to the United States and to comply with all other requirements of this **Section 5.08** and the Arbitrage Instructions shall survive the defeasance or payment in full of the Bonds.

**Section 5.08. Construction Fund.** (a) There shall be paid into the Construction Fund such amounts from the proceeds of a Series of Bonds as may be required by the provisions of this Ordinance and any Series Ordinance. Amounts in the Construction Fund shall be applied to pay the Costs of the Enterprise in the manner provided in this **Section 5.10**.

(b) The proceeds of insurance maintained pursuant to this Ordinance against physical loss of or damage to any portion of the Enterprise, or of contractors' performance bonds with respect thereto, pertaining to the period of construction thereof, shall, upon receipt by the City, be paid into the Construction Fund.

(c) The City shall make payments from the Construction Fund in the amounts, at the times, in the manner and on the other terms and conditions established by the City.

(d) Notwithstanding any of the other provisions of this **Section 5.10**, to the extent that other money is not available therefor, amounts in the Construction Fund shall be applied to the payment of principal, Accreted Value or Appreciated Value of and interest on Bonds when due.

(e) Amounts credited to the Construction Fund which the City at any time determines to be in excess of the amounts required for the purposes thereof may be transferred to the Bond Fund.

(f) Nothing in this **Section 5.10** shall be construed to prevent the City from permanently discontinuing the acquisition or construction of any portion of the Enterprise, the Costs of which are at the time being paid out of the Construction Fund, if the City determines that such discontinuance is

necessary or desirable in the conduct of the business of the City and not disadvantageous to the Owners of the Bonds.

**Section 5.09. Subordinated Indebtedness.** The City may, at any time, or from time to time, issue Subordinated Indebtedness for any lawful purpose of the City related to the Enterprise, which Subordinated Indebtedness shall be payable out of, and may be secured by a security interest in and pledge and assignment of, such amounts in the Revenue Fund after all of the payments and credits required by **Section 5.04(a), (b) and (c)** have been made for the purpose of payment thereof; provided, however, that any security interest and pledge and assignment shall be, and shall be expressed to be, subordinated in all respects to the security interest in and pledge created by this Ordinance as security for the Bonds.

## **ARTICLE VI**

### **DEPOSITORIES OF MONEY, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS**

**Section 6.01. Depositories.** (a) All money held by the City or any Fiduciary under the provisions of this Ordinance shall constitute trust funds and such Fiduciary may deposit and invest such money in accordance with such applicable policies as may be established by the City from time to time.

(b) There may be established within any fund or account established hereunder such further accounts or subaccounts as an Authorized Representative may determine.

(c) Money and securities credited to any fund or account held by the City under this Ordinance may be commingled with money and securities credited to other funds or accounts held by the City for purposes of establishing checking or other bank accounts, for purposes of investing funds or otherwise; provided, however, the City shall at all times maintain or cause to be maintained accurate books and records reflecting the amounts credited to each fund and account held by the City. All withdrawals from any commingled money shall be charged against the proper fund or account and no money shall be withdrawn from commingled money if there is not on credit to the fund or account to be charged sufficient funds to cover such withdrawal.

(d) In the event that any funds are held by the City for the benefit of the City, such funds shall be governed by the provisions of this **Section 6.01**.

**Section 6.02. Deposits.** All Revenues and other money held under this Ordinance by the City or any Fiduciary may be placed on demand, savings or time deposit, provided that such deposits shall permit the money so held to be available for use at the time when needed and shall satisfy all other terms and conditions set forth in such applicable policies as may be established by the City from time to time.

**Section 6.03. Investment of Funds.** Unless limited by the provisions of a Series Ordinance, all amounts held in any fund or account established under this Ordinance may be invested and reinvested in Authorized Investments which investments shall mature not later than such times as shall be necessary to provide money when needed for payments to be made from such funds and accounts. Any Paying Agent shall make all such investments of money held by it in accordance with written instructions received from any Authorized Representative. If any Paying Agent does not receive any such written instructions, such Paying Agent shall invest such fund in such Federal Securities as the Paying Agent shall determine.

Interest (net of that which represents a return of accrued interest paid in connection with the purchase of any investment) earned on any money or investments in any fund or account shall be paid into the respective fund or account in which such investment is held; provided, however, that at the direction of the City, such interest earned on money or investments in any such fund or account or any portion thereof shall be paid into the Construction Fund. Interest earned on any money or investments in the Construction Fund shall be held in the Construction Fund for application as provided in **Section 5.10** hereof or paid into the Revenue Fund.

Nothing in this Ordinance shall prevent any investments acquired as investments of funds held under this Ordinance from being issued or held in book-entry form on the books of the Department of the Treasury of the United States.

**Section 6.04. Valuation and Sale of Investments.** Obligations purchased as an investment of money in any fund or account created under the provisions of this Ordinance shall be deemed at all times to be a part of such fund or account and any profit realized from the liquidation of such investment shall be credited to such fund or account and any loss resulting from the liquidation of such investment shall be charged to such fund or account.

In computing the amount in any fund or account created under the provisions of this Ordinance for any purpose provided in this Ordinance, obligations purchased as an investment of money therein shall be valued as provided in the applicable policies established by the City from time to time.

## **ARTICLE VII**

### **PARTICULAR COVENANTS OF THE CITY**

The City covenants and agrees with the Owners as follows:

**Section 7.01. Payment of Bonds.** The City shall duly and punctually pay or cause to be paid, but solely from the Net Revenues, the principal, Accreted Value, Appreciated Value or Redemption Price of every Bond and the interest thereon, at the dates and places and in the manner mentioned in the Bonds, according to the true intent and meaning thereof.

**Section 7.02. Extension of Payment of Bonds.** The City shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the funding of such Bonds or claims for interest or by any other arrangement and in case the maturity of any of the Bonds or the time for payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under this Ordinance, to the benefit of this Ordinance or to any payment out of the Revenues or funds established by this Ordinance, including the investments, if any, thereof, pledged under this Ordinance or the money (except money held in trust for the payment of particular Bonds or claims for interest pursuant to this Ordinance) held by the Fiduciaries, except subject to the prior payment of the principal, Accreted Value or Appreciated Value of all Bonds Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest. Nothing herein shall be deemed to limit the right of the City to issue Option Bonds or Refunding Bonds and such issuance shall not be deemed to constitute an extension of maturity of Bonds.

**Section 7.03. Power to Issue Bonds and Pledge Revenues and Other Funds.** The City is duly authorized under all applicable laws to create and issue the Bonds and to adopt this Ordinance and to

pledge and grant a security interest in the Net Revenues in the manner and to the extent provided in this Ordinance. The Net Revenues are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the respective security interests, pledges and assignments created by this Ordinance, and all corporate or other action on the part of the City to that end has been and will be duly and validly taken. The Bonds and the provisions of this Ordinance are and will be the valid and legally enforceable obligations of the City in accordance with their terms and the terms of this Ordinance, except as the enforcement thereof may be limited by bankruptcy or other similar laws affecting creditors' rights generally. The City shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of and security interest in the Net Revenues and all the rights of the Owners under this Ordinance against all claims and demands of all persons whomsoever.

**Section 7.04. Power to Fix and Collect Rates, Fees and Charges.** The City has, and will have as long as any Bonds are Outstanding, good right and lawful power to establish and collect rates, fees and charges with respect to the use and the sale of the capacity, output or service of the Enterprise subject to the terms of rate schedules relating thereto and subject to the jurisdiction of any applicable regulatory authority and any applicable law. The City shall use its best efforts to oppose any change in law or regulation that would materially adversely affect its right or power to establish or collect such rates, fees and charges.

**Section 7.05. Restrictions on Mortgage or Sale of Enterprise.** The City will not mortgage, pledge or otherwise encumber the Enterprise or any part thereof, nor will it sell, lease or otherwise dispose of the Enterprise or any material part thereof; provided, however, the City may:

(a) sell at fair market value any portion of the Enterprise which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Enterprise, and in the event of sale, the City will apply the proceeds to either (1) redemption of Outstanding Bonds in accordance with the provisions governing repayment of Bonds in advance of the maturity thereof, or (2) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Enterprise as hereinbefore provided;

(b) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the City;

(c) lease, (1) as lessor, any real or personal property which is unused or unimproved, or which has become obsolete, nonproductive or otherwise unusable to the advantage of the City, or which is being acquired as a part of a lease/purchase financing for the acquisition and/or improvement of such property; and/or (2) as lessee, with an option of the City to purchase, any real or personal property for the extension and improvement of the Enterprise. Property being leased as lessor and/or lessee pursuant to this **Section 7.05(c)** shall not be treated as part of the Enterprise for purposes of **Section 7.05** hereof and may be mortgaged, pledged or otherwise encumbered.

**Section 7.06. Annual Budget.** (a) For each Fiscal Year following delivery of any Bonds hereunder, the City shall prepare and adopt a budget for the Enterprise for the next ensuing Fiscal Year.

(b) The City covenants and agrees that it will include in the resolution approving the City's annual budget pursuant to Article IX, Section 26 of the Charter, a designation and appropriation of General Fund cash balances to pay Operation and Maintenance Expenses in an amount sufficient to produce Net Revenues equal to 110% of the annual Debt Service due and payable in such Fiscal Year if and to the extent the Net Revenues in such Fiscal Year are less than 125% of the annual Debt Service due and payable in such Fiscal Year and to the extent that such General Fund cash balances are available.

**Section 7.07. Operation and Maintenance of the Enterprise.** The City shall at all times use its best efforts to operate or cause to be operated the Enterprise properly and in an efficient and economical manner, consistent with Prudent Enterprise Management, and shall use its best efforts to maintain, preserve, reconstruct and keep the same or cause the same to be so maintained, preserved, reconstructed and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or use its best efforts to cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Enterprise may be properly conducted. The City shall promptly pay all Operation and Maintenance Expenses and all other costs and expenses payable from the Revenues.

**Section 7.08. Rates, Fees and Charges.** The City will fix, establish, maintain and collect such rates, charges and fees for the use of and services furnished by the Enterprise and revise such rates, charges and fees to produce Revenues each Fiscal Year sufficient:

- (a) to pay all Operation and Maintenance Expenses;
- (b) to produce Net Revenues equal to 125% of the annual Debt Service due and payable in such Fiscal Year of the then Outstanding Bonds; and
- (c) to pay after deducting the amounts determined in **Section 7.08(b)** and **(c)** hereof, all other financial obligations of the Enterprise reasonably anticipated to be paid from Revenues.

If the Net Revenues in any Fiscal Year are less than the aggregate amount specified above the City shall within 60 days from the date of receipt of the annual audit for such Fiscal Year either (1) cause such rates and charges to be revised and adjusted to comply with this **Section 7.08** or (2) obtain a written report from an Independent Consultant after a review and study of the operations of the Enterprise has been made concluding that, in their opinion, the rates and charges then in effect for the current Fiscal Year are sufficient or adjustments and revisions need to be made to such rates and charges to comply with this **Section 7.08** and such adjustments and revisions to such rates and charges are promptly implemented and enacted in accordance with such Independent Consultant's report.

**Section 7.09. Senior Lien Bonds; Additional Bonds.** (a) The City covenants and agrees that so long as any of the Bonds remain Outstanding, the City will not issue any additional bonds or incur or assume any other debt obligations appearing as liabilities on the balance sheet of the City for the payment of money determined in accordance with generally accepted accounting principles including capital leases as defined by generally accepted accounting principles, payable out of the Revenues of the Enterprise or any part thereof which are superior to the Bonds.

(b) The City covenants and agrees that so long as any of the Bonds remain Outstanding, it will not issue any Additional Bonds payable out of the Net Revenues of the Enterprise or any part thereof which stand on a parity or equality with the Bond unless the following conditions are met:

(1) The City shall not be in default in the payment of principal of or interest on any Bonds at the time Outstanding hereunder or in making any payment at the time required to be made into the respective funds and accounts created by and referred to in this Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default); and

(2) The City shall have satisfied either of the following:

(A) The annual Net Revenues derived by the City from the operation of the Enterprise for the Fiscal Year immediately preceding the issuance of such Additional Bonds shall have been equal to at least [150]% of the maximum annual Debt Service required to be paid from the Net Revenues in any succeeding Fiscal Year on account of both principal (at maturity or through a Sinking Fund Installment) and interest becoming due with respect to all Outstanding Bonds of the City, including the Additional Bonds proposed to be issued; or

(B) An Independent Consultant shall project that the annual Net Revenues to be derived by the City from the operation of the Enterprise for the Fiscal Year immediately following the Fiscal Year in which the improvements to the Enterprise, the cost of which is being financed by such Additional Bonds, are to be in use and operation, shall be equal to at least [150]% of the maximum annual Debt Service required to be paid out of the Net Revenues in any succeeding Fiscal Year following such use or operation on account of both principal (at maturity or through a Sinking Fund Installment) and interest becoming due with respect to all Outstanding Bonds of the City, including the Additional Bonds proposed to be issued. In determining the projected Net Revenues for the purpose of this **Section 7.09(b)(2)(B)**, the Independent Consultant may adjust the Net Revenues by adding thereto any estimated increase in Net Revenues resulting from any increase in rates for the use and services of the Enterprise which, in the opinion of the Independent Consultant, are economically feasible and reasonably considered necessary based on projected operations of the Enterprise.

Additional Bonds issued under the conditions set forth in this **Section 7.09** shall stand on a parity with the Bonds and shall enjoy complete equality of lien on and claim against the Net Revenues with the Bonds, and the City may make equal provision for paying said Additional Bonds and the interest thereon out of the Revenue Fund.

**Section 7.10. Maintenance of Insurance.** The City will carry and maintain insurance with respect to the Enterprise and its operations against such casualties, contingencies and risks (including but not limited to property and casualty, fire and extended coverage insurance upon all of the properties forming a part of the Enterprise insofar as the same are of an insurable nature, public liability, business interruption or use and occupancy insurance, workers' compensation and employee dishonesty insurance), such insurance to be of the character and coverage and in such amounts as would normally be carried by other enterprises engaged in similar activities of comparable size and similarly situated. In the event of loss or damage, the City, with reasonable dispatch, will use the proceeds of such insurance in reconstructing and replacing the property damaged or destroyed, or in paying the claims on account of which such proceeds were received, or if such reconstruction or replacement is unnecessary or impracticable, then the City will pay and deposit the proceeds of such insurance into the Revenue Fund. The City will annually review the insurance it maintains with respect to the Enterprise to determine that it is customary and adequate to protect its property and operations. The City may elect to be self-insured for all or any part of the foregoing requirements if (a) the City annually obtains a written evaluation with respect to such self-insurance program from an Insurance Consultant, (b) the evaluation is to the effect that the self-insurance program is actuarially sound, (c) unless the evaluation states that such reserves are not necessary, the City deposits and maintains adequate reserves for the self-insurance program with a corporate trustee, who may be the Paying Agent, and (d) in the case of workers' compensation, adequate reserves created by the City for such self-insurance program are deposited and maintained in such amount and manner as are acceptable to the State. The City shall pay any fees and expenses of such Insurance Consultant in connection therewith. The cost of all insurance obtained pursuant to the requirements of this

**Section 7.10** shall be paid as an Operation and Maintenance Expense out of the Revenues of the Enterprise.

**Section 7.11. Application of Insurance Proceeds.** (a) If any useful portion of the Enterprise shall be damaged or destroyed, the City shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the City. The proceeds of insurance covering such property, together with any other funds available for such purpose as the City in its sole discretion shall determine, shall be used to repair the property damaged or replace the property destroyed; provided, however, if the insurance proceeds and other funds that might be lawfully appropriated therefore are insufficient to repair or replace the damaged property, then such insurance proceeds received for the damaged or destroyed property shall be deposited to the credit of a special insurance account or fund until other funds become available which, together with funds on deposit to the credit of such special insurance account, will be sufficient to make the repairs or replacements to the property damaged or destroyed that resulted in such insurance proceeds or make other improvements to the Enterprise.

**Section 7.12. Accounts and Reports.** (a) The City shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Enterprise and each fund and account established under this Ordinance, and which, together with all other books and papers of the City, including insurance policies, relating to the Enterprise, shall upon reasonable advance notice and during regular business hours, be subject to the inspection of the Owners of an aggregate of not less than 5% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.

(b) Annually, promptly after the end of each Fiscal Year, the City will cause an audit to be made of the Enterprise for the preceding Fiscal Year by a certified public accountant or firm of certified public accountants to be employed for that purpose and paid from the Revenues. Said annual audit shall cover in reasonable detail the operation of the Enterprise during such Fiscal Year.

(c) Each Paying Agent shall advise the City promptly after the end of each Fiscal Year of its transactions during such Fiscal Year relating to all balances handled by it under the Ordinance.

(d) For so long as Rule 15c2-12(b) of the Securities and Exchange Commission (the “Rule”) is applicable, the City hereby covenants and agrees that it will comply with and carry out all of the provisions of each undertaking entered into by it to satisfy the requirements of the Rule with respect to each Series of Bonds issued pursuant to this Ordinance. Notwithstanding any other provision of this Ordinance, failure of the City to comply with such undertaking shall not be considered an Event of Default; however, the Owner or Beneficial Owner of any Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this **Section 7.12**. For purposes of this **Section 7.12**, “Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

**Section 7.13. Payment of Taxes and Charges.** The City will from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges or required payments in lieu thereof, lawfully imposed upon the properties of the City or upon the rights, revenues, income, receipts, and other money, securities and funds of the City when the same shall become due (including all rights, money and other property transferred, assigned or pledged under this



Ordinance), and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which the City shall in good faith contest by proper legal proceedings if the City shall in all such cases have set aside on its books reserves deemed adequate by the City with respect thereto.

**Section 7.14. Not to Render Free Service.** The City shall not furnish or supply or permit the furnishing or supplying of the services of the Enterprise or any other commodity, service or facility furnished or supplied by or through or in connection with the operation of the properties of the Enterprise free of charge to any Person.

**Section 7.15. Employees' Fidelity Bonds.** The City will, as permitted by law, require all officers, employees or agencies of the City (including of any board thereof) collecting or handling money in connection with the operation of the properties of the Enterprise to obtain fidelity bonds with a responsible surety company or companies as surety, in reasonable amounts usually obtained by municipalities operating like facilities.

**Section 7.16. To Maintain Franchises and Other Rights.** The City shall obtain, and shall not permit or allow to lapse or to be forfeited, franchises, permits, privileges, easements or other rights necessary or desirable in the operation of the properties of the Enterprise so long as the same shall be necessary or desirable for said purposes. The City from time to time will take reasonable steps to secure the renewal of all such franchises, permits, privileges, easements and rights at the expiration thereof if the same shall expire prior to the maturity of all Bonds then outstanding. The City shall file all statements, maps and other documents regarding its service area and customers as may be required by law to protect and preserve such area.

**Section 7.17. Consultant.** At least once every five years, the City will employ an independent consulting engineer or firm of consulting engineers having a wide and favorable reputation for skill and experience in the construction and operation of public utilities and will cause such consulting engineer or engineers to make an examination of and report on the condition and operation of the Enterprise, such report to include recommendations as to any changes in such operations deemed desirable. Each such report shall also make reference to any unusual or extraordinary items.

**Section 7.18. General.** (a) The City shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under the provisions of the Act and this Ordinance.

(b) Upon the date of authentication and delivery of any of the Bonds, all conditions, acts and things required by law and this Ordinance to exist, to have happened and to have been performed precedent to and in the issuance of such Bonds shall exist, have happened and have been performed and the issue of such Bonds, together with all other indebtedness of the City, shall comply in all respects with the applicable laws of the State.

## **ARTICLE VIII**

### **MODIFICATION OR AMENDMENT OF THIS ORDINANCE**

#### **Section 8.01. Amendments Permitted.**

(a) (1) Unless such modifications or amendments are permitted by **Section 8.01(b)** hereof, this Ordinance and the rights and obligations of the City, the Owners and any Fiduciary may only

be modified or amended from time to time and at any time by filing with each Fiduciary a Supplemental Ordinance adopted by the City with the written consent of the Owners of a majority in aggregate amount of the Bond Obligation of the Bonds (or, if such Supplemental Ordinance is only applicable to a Series of Bonds, the Bonds of that Series) then Outstanding; provided that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any particular maturity remain outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Bonds Outstanding under this Section.

(2) No such modification or amendment shall (A) extend the fixed maturity of any Bond, or reduce the amount of the Bond Obligation thereof, or extend the time of payment or reduce the amount of any Sinking Fund Installment provided for the payment of any Bond, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, (B) reduce the aforesaid percentage of the Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Net Revenues and other assets pledged under this Ordinance prior to or on a parity with the lien created by this Ordinance, or deprive the Owners of the Bonds of the lien created by this Ordinance on such Net Revenues and other assets (in each case, except as expressly provided in this Ordinance), without the consent of the Owners of all of the Bonds then Outstanding, or (C) modify any rights or duties of any Fiduciary without its consent.

(3) It shall not be necessary for the consent of the Owners to approve the particular form of any Supplemental Ordinance, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the adoption by the City of any Supplemental Ordinance pursuant to this **Section 8.01(a)**, the Registrar shall mail a notice provided by the Ordinance, setting forth in general terms the substance of such Supplemental Ordinance to the Owners of the Bonds at the addresses shown on the registration books of the Registrar. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Ordinance.

(4) If within one year from the date of the mailing by the Registrar of written notice to the Owners of the Bonds, the City shall receive an instrument or instruments executed by the Owners of at least a majority in aggregate amount of the Bond Obligation consenting to and approving such amendment in substantially the form of the copy thereof on file with each Registrar, as the case may be, for the Bonds, the governing body of the City may pass the Supplemental Ordinance in substantially the same form.

(5) Any consent given by the Owner of a Bond pursuant to the provisions of this **Section 8.01** shall be irrevocable for a period of six months from the date for measuring the one year period to obtain consents noted in **Section 8.01(a)(4)** hereof, and shall be conclusive and binding upon all future owners of the same Bond during such period. At any time after six months from the date for measuring the one year period to obtain consents noted in **Section 8.01(a)(4)** hereof, such consent may be revoked by the Owner who gave such consent, or by a successor in title, by filing written notice thereof with the Registrar, as the case may be, for such Bond and the City, but such revocation shall not be effective if the Owners of at least a majority in aggregate amount of the then Outstanding Bond Obligation as determined in accordance with this **Section 8.01** have, prior to the attempted revocation, consented to and approved the amendment.

(b) This Ordinance and the rights and obligations of the City, of each Fiduciary and of the Owners may also be modified or amended from time to time at any time by a Series Ordinance or a Supplemental Ordinance, which the City may adopt without the consent of any Owners but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the City in this Ordinance thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the City, in each case which shall not materially and adversely affect the interests of the Owners in the determination of the City;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Ordinance, or in regard to matters or questions arising under this Ordinance, as the City may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners in the determination of the City;

(3) to modify, amend or supplement this Ordinance in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially and adversely affect the interests of the Owners;

(4) to provide for the issuance of a Series of Bonds in a Series Ordinance with such interest rate, payment, maturity and other terms as the City may deem desirable subject to the provisions of **Article III** hereof;

(5) if the City has covenanted in a Series Ordinance to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(6) to modify any of the provisions of this Ordinance in any other respect whatsoever, provided that (A) such modification shall be, and be expressed to be, effective only after all Bonds of each Series Outstanding at the date of the adoption of such Series or Supplemental Ordinance shall cease to be Outstanding, and (B) such Series or Supplemental Ordinance shall be specifically referred to in the text of all Bonds of any Series authenticated and delivered after the date of the adoption of such Series Ordinance and of Bonds issued in exchange therefor or in place thereof;

(7) to authorize Subordinated Indebtedness and, in connection therewith, specify and determine any matters and things relative to such Subordinated Indebtedness which are not contrary to or inconsistent with this Ordinance as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first authentication and delivery of such Subordinated Indebtedness;

(8) to authorize the establishment of such funds or accounts as the City may determine to be necessary, desirable, advisable or in the best interests of the City, and, in connection therewith, to specify and determine the matters and things referred to in **Section 5.02(d)** hereof or to modify any such matters and things in any other respect whatsoever; or

(9) for any other purpose which, in the determination of the City, does not materially and adversely affect the interests of the Owners of any of the Bonds.

In making any determination that any modification or amendment does not materially and adversely affect the interest of the Owners, the City may rely on an opinion of counsel that may be counsel to the City or bond counsel.

**Section 8.02. Effect of Supplemental Ordinance.** From and after the time any Supplemental Ordinance becomes effective pursuant to this **Article VIII**, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City, each Fiduciary and all owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

**Section 8.03. Endorsement of Bonds; Preparation of New Bonds.** Bonds delivered after any Supplemental Ordinance becomes effective pursuant to this **Article VIII** may, and if the Registrar so determines shall, bear a notation by endorsement or otherwise in form approved by the City and the Registrar as to any modification or amendment provided for in such Supplemental Ordinance, and, in that case, upon demand of the Owner of any Bond Outstanding at the time of such execution and presentation of his Bond for such purpose at the principal corporate trust office of the Registrar or at such additional offices as the Registrar may select and designate for that purpose, a suitable notation shall be made on such Bond. If a Supplemental Ordinance shall so provide, new Bonds so modified as to conform, in the opinion of the City and the Registrar, to any modification or amendment contained in such Supplemental Ordinance, shall be prepared and executed by the City and authenticated by such Registrar and upon demand of the Owners of any Bonds then Outstanding shall be exchanged at the principal office of the Registrar without cost to any Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amounts of the same Series, tenor and maturity.

**Section 8.04. Amendment of Particular Bonds.** The provisions of this **Article VIII** shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

## **ARTICLE IX**

### **DEFEASANCE**

**Section 9.01. Discharge of Ordinance.** Except as may be provided in any Series Ordinance creating a Series of Bonds, Bonds of any Series may be paid by the City in any of the following ways:

- (a) by paying or causing to be paid the Bond Obligation of and interest on all Bonds Outstanding of the Series, as and when the same become due and payable;
- (b) by depositing with the Paying Agent, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in **Section 9.03** hereof) to pay or redeem all Bonds Outstanding of the Series; or
- (c) by delivering to the Paying Agent, for cancellation by it, all Bonds then Outstanding of the Series.

If the City shall pay all Bonds of a Series for which any Bonds are Outstanding and also pay or cause to be paid all other sums payable to any provider of a Credit Facility hereunder, then and in that

case, at the election of the City (evidenced by a Certificate of the City, filed with the Paying Agent, signifying the intention of the City to discharge all such indebtedness and this Ordinance), and notwithstanding that any Bonds shall not have been surrendered for payment, this Ordinance and the pledge of Net Revenues and other assets made under this Ordinance and all covenants, agreements and other obligations of the City under this Ordinance shall cease, terminate, become void and be completely discharged and satisfied.

**Section 9.02. Discharge of Liability on Bonds.** Upon the deposit with the Paying Agent, an escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in **Section 9.03** hereof) to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, irrevocable notice of such redemption shall have been given as provided in **Article IV** hereof or provision satisfactory to the Registrar and Paying Agent shall have been made for the giving of such notice, then all liability of the City in respect of such Bond shall cease, terminate and be completely discharged; provided that the Owner thereof shall thereafter be entitled to the payment of the principal or Redemption Price of and interest on such Bond, and the City shall remain liable for such payment, but only out of such money or securities deposited as aforesaid for their payment, subject, however, to the provisions of **Section 9.04** hereof and the continuing duties of the Paying Agent and Registrar hereunder including, without limitation, the provisions of **Sections 2.05** and **2.06** hereof.

The City may at any time surrender to the Paying Agent for cancellation by it any Bonds previously issued and delivered, which the City may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

**Section 9.03. Deposit of Money or Securities with Paying Agent.** (a) Unless otherwise provided in a Series Ordinance (and then only with respect to the Bonds of the Series authorized thereby), whenever in this Ordinance it is provided or permitted that there be deposited with or held in trust by the Paying Agent, an escrow agent or other fiduciary, money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Paying Agent in the funds and accounts established pursuant to this Ordinance and shall be one or more of the following:

(1) lawful money of the United States in an amount equal to the Bond Obligation of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in **Article IV** hereof or provision satisfactory to each Fiduciary shall have been made for the giving of such notice, the amount to be deposited or held shall be the Bond Obligation or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(2) Federal Securities or Municipal Obligations which are non-callable by the issuer, the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Paying Agent for which payment is being made (upon which opinion the Paying Agent may conclusively rely), provide money sufficient to pay the Bond Obligation or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such Bond Obligation or Redemption Price and interest become due; provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in **Article IV** hereof or provision satisfactory to the Registrar shall have been made for the giving of such notice;

provided, in each case, that the Paying Agent shall have been irrevocably instructed (by the terms of this Ordinance or by Request of the City) to apply such money to the payment of such Bond Obligation or Redemption Price and interest with respect to such Bonds.

(b) For purposes of determining whether Variable Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of money, or Federal Securities, Municipal Obligations and money, if any, in accordance with this **Section 9.03**, the interest to come due on such Variable Rate Bonds on or prior to the maturity date or redemption date thereof, as the case may be, shall be calculated at the maximum rate permitted by the terms thereof; provided, however, that if on any date, as a result of such Variable Rate Bonds having borne interest at less than such maximum rate for any period, the total amount of money on deposit with the Paying Agent for the payment of interest on such Variable Rate Bonds is in excess of the total amount which would have been required to be deposited with the Paying Agent on such date in respect of such Variable Rate Bonds in order to satisfy this **Section 9.03**, the Paying Agent shall, if requested, by the City, pay the amount of such excess to the City free and clear of any trust, lien, security interest, pledge or assignment securing the Bonds or otherwise existing under this Ordinance.

(c) Option Bonds shall be deemed to have been paid in accordance with this **Section 9.03** only if, in addition to satisfying the requirements of **Section 9.03(a)** hereof, there shall have been deposited with the Paying Agent money (including money withdrawn and deposited pursuant to **Section 5.05(d)** hereof) in an amount which shall be sufficient to pay when due the maximum amount of principal and premium, if any, and interest on such Bonds which could become payable to the Owners of such Bonds upon the exercise of any options provided to the Owners of such Bonds; provided, however, that if, at the time a deposit is made with the Paying Agent pursuant to this **Section 9.03**, the options originally exercisable by the Owners of an Option Bond are no longer exercisable, such Bond shall not be considered an Option Bond for purposes of this **Section 9.03(c)**. If any portion of the money deposited with the Paying Agent for the payment of the principal of and premium, if any, and interest on Option Bonds is not required for such purpose the Paying Agent shall, if requested by the City, pay the amount of such excess to the City free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Ordinance.

**Section 9.04. Payment of Bonds After Discharge of Ordinance.** Any money held by the Paying Agent, an escrow agent or other fiduciary in trust for the payment of the principal, Accreted Value or Appreciated Value of, premium, if any, or interest on, any Bond and remaining unclaimed for five years after such principal, Accreted Value or Appreciated Value of, premium, if any, or interest on such Bond has become due and payable (whether at maturity or upon call for redemption as provided in this Ordinance), if such money were so held at such date, or two years after the date of deposit of such money if deposited after said date when such Bond became so due and payable, shall, upon Request of the City, be released from the trusts created by this Ordinance and transferred to the City, and all liability of the Paying Agent, an escrow agent or other fiduciary with respect to such money shall thereupon cease; provided, however, that before the release of such trust as aforesaid, the Paying Agent may (at the cost of the City) first mail to the Owners of any Bonds remaining unpaid at the addresses shown on the registration books maintained by the Registrar a notice, in such form as may be deemed appropriate by the Paying Agent, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the City of the money held for the payment thereof. All money held by or on behalf of the Paying Agent, an escrow agent or other fiduciary for the payment of the Bond Obligation of or interest or premium on Bonds, whether at redemption or maturity, shall be held in trust for the account of the Owners thereof and the Paying Agent, an escrow agent or other fiduciary shall not be required to pay Owners any interest on, or be liable to the owners or any other Person (other than the

City) for any interest earned on, money so held. Any interest earned thereon and not needed to pay principal, Accreted Value or Appreciated Value of or interest on the Bonds shall be promptly released to the City and shall be promptly deposited into the Revenue Fund.

## **ARTICLE X**

### **DEFAULTS AND REMEDIES**

**Section 10.01. Events of Default.** Each of the following events shall be an “Event of Default:”

(a) Default by the City in the due and punctual payment of the principal, Accreted Value or Appreciated Value of, or premium, if any, on any Bond (whether at maturity, by acceleration, call for redemption or otherwise);

(b) Default by the City in the due and punctual payment of the interest on any Bond and such default shall continue for a period of 30 days after the due date for the payment of such interest;

(c) Failure of the City to observe and perform any of its other covenants, conditions or agreements under this Ordinance or in the Bonds for a period of 90 days after written notice from the Owners of 25% in aggregate amount of the Bond Obligation of the Bonds then outstanding, specifying such failure and requesting that it be remedied, or in the case of any such default that cannot with due diligence be cured within such 90 day period, failure of the City to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence;

(d) (1) Failure of the City generally to pay its debts as the same become due, (2) commencement by the City of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, (3) consent by the City to the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the City, the Enterprise or any substantial part of the City's property, or to the taking possession by any such official of the Enterprise or any substantial part of the City's property, (4) making by the City of any assignment for the benefit of creditors, or (5) taking of corporate action by the City in furtherance of any of the foregoing;

(e) The entry of any (1) decree or order for relief by a court having jurisdiction over the City or its property in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, (2) appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for the City, the Enterprise or any substantial part of the City's property, or (3) order for the termination or liquidation of the City, the Enterprise or the affairs of any of them; or

(f) Failure of the City within 90 days after the commencement of any proceedings against it under the Federal bankruptcy laws prior any other applicable Federal or state bankruptcy, insolvency or similar law, to have such proceedings dismissed or stayed.

The provisions of **Section 10.01(c)** hereof are subject to the limitation that if by reason of force majeure the City is unable in whole or in part to observe and perform any of its covenants, conditions or agreements hereunder, the City shall not be deemed in default during the continuance of such disability. The term “force majeure” as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United

States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the City. The City shall, however, remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City, and the City shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties.

**Section 10.02. Enforcement of Remedies.** Upon the happening and continuance of any Event of Default, then and in every such case the Owners of not less than 25% of the Bond Obligation may appoint any state bank, national bank, trust company or national banking association qualified to transact business in the State to serve as trustee for the benefit of the Owners of all Bonds then outstanding (the “Receiver”). Notice of such appointment, together with evidence of the requisite signatures of the Owners of 25% of the Bond Obligation and the trust instrument under which the Receiver shall have agreed to serve shall be filed with the City with a copy to the Receiver and notice of such appointment shall be mailed to the Owners of the Bonds. After the appointment of a Receiver hereunder, no further Receivers may be appointed; however, the Owners of a majority of the Bond Obligation may remove the Receiver initially appointed and appoint a successor and subsequent successors at any time. If the default for which the Receiver was appointed is cured or waived pursuant to this **Article X**, the appointment of the Receiver shall terminate with respect to such default.

After a Receiver has been appointed pursuant to the foregoing, the Receiver may proceed, and upon the written request of Owners of 25% of the Bond Obligation shall proceed, to protect and enforce the rights of the Owners under the laws of the State, including the Act, and under this Ordinance, by such suits, actions or special proceedings in equity or at law, or by regulatory or administrative proceedings in the office of any board, body or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid of execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, all as the Receiver, being advised by counsel, shall deem most effectual to protect and enforce such rights.

In the enforcement of any remedy against the City, under this Ordinance the Receiver shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the City, for principal, interest or other sums due under any provisions of this Ordinance or of such Bonds and unpaid, with interest on overdue payments of principal and, if permitted by law, at the rate or rates of interest specified in such Bonds, together with any and all reasonable costs and expenses of collection and of all proceedings hereunder and under such Bonds without prejudice to any other right or remedy of the Receiver or of the Owners, and to recover and enforce any judgment or decree against the City, but solely as provided herein and in such Bonds, for any portion of such amounts remaining unpaid and interest, costs and expenses as above provided, and to collect (but solely from money in the Revenue Fund and any other money available for such purpose) in any manner provided by law, the money adjudged or decreed to be payable.

**Section 10.03. Effect of Discontinuing Proceedings.** In case any proceeding taken by the Receiver or any Owner on account of any default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Receiver or such Owner, then and in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Receiver shall continue as though no such proceeding had been taken.



**Section 10.04. Directions to Receiver as to Remedial Proceedings.** Anything in this Ordinance to the contrary notwithstanding, the Owners of a majority of the Bond Obligation shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Receiver, to direct the method and place of conducting all remedial proceedings to be taken by the Receiver hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions of this Ordinance, and that the Receiver shall have the right to decline to follow any such direction which in the opinion of the Receiver would be unjustly prejudicial to Owners not parties to such direction.

**Section 10.05. Pro Rata Application of Funds.** (a) Anything in this Ordinance to the contrary notwithstanding, if at any time the money in the Revenue Fund shall not be sufficient to pay the principal, Accreted Value, Appreciated Value or Redemption Price of or the interest on the Bonds as the same become due and payable, such money, together with any money then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this **Article X** or otherwise, shall be applied as follows:

(1) Unless the principal of all the Bonds shall have become due and payable, all such money shall be applied (A) to the payment of all installments of interest then due on the Bonds then due, in the order of the maturity of the installments of such interest, to the persons entitled thereto, ratable, without any discrimination or preference, and (B) to the payment of all installments of principal of Bonds then due.

(2) If the principal of all the Bonds shall have become due and payable, all such money shall be applied to the payment of the principal, Accreted Value, Appreciated Value or Redemption Price or interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bonds over any other Bonds, ratable, according to the amounts due, respectively, for principal or interest to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(b) Whenever money are to be applied by the Receiver pursuant to the provisions of this **Section 10.05**, such money shall be applied by the Receiver at such times, and from time to time, as the Receiver in its sole discretion shall determine, having due regard to the amount of such money available for application and the likelihood of additional money becoming available for such application in the future; the setting aside of such money, in trust for the proper purpose, shall constitute proper application by the Receiver; and the Receiver shall incur no liability whatsoever to the City, to any Owner or to any other person for any delay in applying any such money, so long as the Receiver acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Ordinance as may be applicable at the time of application by the Receiver. Whenever the receiver shall exercise such discretion in applying such money, it shall fix the date (which shall be an interest Payment Date unless the Receiver shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue, the Accreted Value of Capital Appreciation Bonds shall cease to accrete and the Appreciated Value of any Deferred Income Bond. The Receiver shall give such notice as it may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any Bond unless such Bond shall be presented to the Receiver for appropriate endorsement or for cancellation if fully paid.

**Section 10.06. Restrictions on Actions by Individual Owners.** No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder or for any other remedy hereunder unless such Owner previously shall have given to the Receiver written notice of the event of default on account of which such suit, action or proceeding is to be taken, and unless the Owner of not less than 25% of the Bond Obligation shall have made written request of the Receiver after the right to exercise such powers or right of action, as the case may be, shall have accrued and shall have afforded the Receiver a reasonable opportunity either to proceed to exercise the powers hereinabove granted or to institute such action, suit or proceeding in its or their name, and unless, also, there shall have been offered to the Receiver reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, including the reasonable fees of its attorneys (including fees on appeal), and the Receiver shall have refused or neglected to comply with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Receiver, to be conditions precedent to the execution of the powers and trusts of this Ordinance or for any other remedy hereunder. It is understood and intended that no one or more Owners of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all Owners, and that any individual rights of action or any other right given to one or more of such Owners by law are restricted by this Ordinance to the rights and remedies herein provided.

Nothing contained herein, however, shall affect or impair the right of any Owner individually, to enforce the payment of the principal of and interest on his Bond or Bonds at and after the maturity thereof, at the time, place, from the source and in the manner provided in the Ordinance.

## **ARTICLE XI**

### **MISCELLANEOUS**

**Section 11.01. Liability of City Limited to Net Revenues.** Notwithstanding anything in this Ordinance or in the Bonds contained, the City shall not be required to advance any money derived from any source other than the Net Revenues and other money, assets and security pledged hereunder for any of the purposes in this Ordinance mentioned, whether for the payment of the principal, Accreted Value, Appreciated Value or Redemption Price of or interest on the Bonds or for any other purpose of this Ordinance.

The general fund of the City is not liable for the payment of any Bonds, any premium thereon upon redemption prior to maturity or their interest, nor is the credit or taxing power of the City pledged for the payment of any Bonds, any premium thereon upon redemption prior to maturity or their interest. The Owner of any Bond shall not compel the exercise of the taxing power by the City or the forfeiture of any of its property. The principal, Accreted Value and Appreciated Value of and interest on any Bonds and any premiums payable upon the redemption of any Bonds prior to maturity are not a debt of the City nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Net Revenues and other funds, security or assets which are pledged to the payment of the Bonds, interest thereon and any premiums upon redemption.

**Section 11.02. Successor Is Deemed Included in All References to Predecessor.** Whenever in this Ordinance either the City or any Fiduciary is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Ordinance

contained by or on behalf of the City or any Fiduciary shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 11.03. Limitation of Rights to City, Fiduciaries and Owners.** Nothing in this Ordinance or in the Bonds expressed or implied is intended or shall be construed to give to any Person other than the City, each Fiduciary, and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Ordinance or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, each Fiduciary and the Owners of the Bonds.

**Section 11.04. Waiver of Notice.** Whenever in this Ordinance the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 11.05. Destruction or Delivery of Cancelled Bonds.** Whenever in this Ordinance provision is made for the cancellation by the Paying Agent and the delivery to the City of any Bonds, the Paying Agent may, in its sole discretion, in lieu of such cancellation and delivery, destroy such Bonds and deliver a certificate of such destruction to the City.

**Section 11.06. Severability of Invalid Provisions.** If any one or more of the provisions contained in this Ordinance or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Ordinance and such invalidity, illegality or unenforceability shall not affect any other provision of this Ordinance, and this Ordinance shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The City hereby declares that it would have adopted this Ordinance and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Ordinance may be held illegal, invalid or unenforceable.

**Section 11.07. Manner of Giving Notice.** All notices, demands, statements, requests and all other communications to be given to or made hereunder by the City or any Fiduciary shall be given or made in writing and shall be deemed to be properly given or made if sent by United States certified mail, return receipt requested, postage prepaid, addressed as shall be set forth in the Series Ordinance.

**Section 11.08. Evidence of Rights of Owners.** Any request, consent or other instrument required or permitted by this Ordinance to be signed and executed by Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Owners in Person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any Person of Bonds transferable by delivery, shall be sufficient for any purpose of this Ordinance and shall be conclusive in favor of any Fiduciary and of the City if made in the manner provided in this **Section 11.08**.

The fact and date of the execution by any Person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the bond registration books held by the Registrar. The Registrar may establish a record date as of which to measure consent of the Owners of a Series of Bonds in order to determine whether the requisite Consents are received.

Except as may be provided in the Series Ordinance authorizing a Series of Bonds, any request, consent, or other instrument or writing of the owner of any Bond of such Series shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by any Fiduciary or the City in accordance therewith or reliance thereon.

**Section 11.09. Disqualified Bonds.** In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Ordinance, Bonds which are owned or held by or for the account of the City, or by any other obligor on the Bonds, or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other obligor on the Bonds (except for any remarketing or other underwriting agent), shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Registrar the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Registrar taken upon the advice of counsel shall be full protection to the Registrar.

**Section 11.10. Money Held for Particular Bonds.** The money held by the Paying Agent for the payment of the interest, principal, Accreted Value, Appreciated Value or Redemption Price due on any date with respect to particular Bonds (or portions of Bonds in the case of registered Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on the City's books and held in trust by the City for the Owners of the Bonds entitled thereto, subject, however, to the provisions of **Section 9.04** hereof.

**Section 11.11. Funds and Accounts.** Any fund required by this Ordinance to be established and maintained by the City or any Fiduciary may be established and maintained in the accounting records of the City or the Fiduciary, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or an account; but all such records with respect to all such funds shall at all times be maintained in accordance with customary standards of the industry, to the extent practicable, and with due regard for the protection of the security of the Bonds and the rights of every holder thereof.

**Section 11.12. Proceedings Constitute Contract.** The provisions of this Ordinance shall constitute a contract between the City and the Owners of such Bonds, and the provisions hereof and thereof shall be enforceable by any Owner for the equal benefit and protection of all Owners similarly situated by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is now or may hereafter be authorized under the laws of the State in any court of competent jurisdiction.

No remedy conferred hereby upon any Owner is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by any law of the State. No waiver of any default or breach of duty or contract by any Owner shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies on said subsequent default or breach. No delay or

omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed as a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Owners may be enforced and exercised as often as may be deemed expedient. In case any suit, action or proceeding to reinforce any right or exercise any remedy shall be brought or taken and the Owner shall prevail, said Owner shall be entitled to receive from the Revenue Fund reimbursement for reasonable costs, expenses, outlays and attorney's fees and should said suit, action or proceeding be abandoned, or be determined adversely to the Owner then, and in every such case, the City and the Owner shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

After the issuance and delivery of the Bonds of any Series, this Ordinance shall be irrevocable, but shall be subject to modification to the extent and in the manner provided in this Ordinance, but to no greater extent and in no other manner.

**Section 11.13. Article and Section Headings and References; Interpretation.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

**Section 11.14. Waiver of Personal Liability.** No member of the Council, the Mayor, officer, agent or employee of the City or any Fiduciary shall be individually or personally liable for the payment of the principal, Accreted Value, Appreciated Value or Redemption Price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member of the Council, the Mayor, officer, agent or employee of the City or any Fiduciary from the performance of any official duty provided by law or by this Ordinance.

**Section 11.15. Governing Law.** This Ordinance shall be construed and governed in accordance with the laws of the State.

**Section 11.16. Payment and Performance on a Business Day.** Except as specifically set forth in a Series Ordinance, any payments or transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day and no interest shall accrue for such period.

**Section 11.17. Publication and Effectiveness of Ordinance.** This Ordinance, after its passage, shall, in lieu of and in place of newspaper publication, be posted by the City Clerk in the manner provided for in Article VII, Section 7 of the Charter of the City, and shall take effect and be in force from and after its passage and posting in accordance with Article VII, Section 7 of the Charter of the City. Further, the City Clerk shall publish once in the *Lincoln Journal-Star*, a newspaper published and of general circulation in the City, a notice of such passage in substantially the following form:

Notice is hereby given that on \_\_\_\_\_, 2006, the Council of the City of Lincoln, Nebraska passed Ordinance No. \_\_\_\_\_ entitled: [here shall be set forth the title of this Ordinance].

Notice is hereby further given that said Ordinance No. \_\_\_\_\_ was approved by the Mayor of the City of Lincoln, Nebraska, on \_\_\_\_\_, 2006.

Copies of said Ordinance No. \_\_\_\_\_ are on file in the office of the City Clerk of the City of Lincoln, Nebraska, Room 103, County-City Building, 555 South 10th Street, Lincoln, Nebraska 68508, and are available for examination by the public.

*[The remainder of this page intentionally left blank.]*

**INTRODUCED BY:**

\_\_\_\_\_

**PASSED** \_\_\_\_\_, 2006.

**AYES:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NAYS:** \_\_\_\_\_

\_\_\_\_\_

**ABSENT OR NOT VOTING:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_

**City Attorney**

\_\_\_\_\_

**Bond Counsel**

**CONFLICT OF INTEREST:**

\_\_\_\_\_

**APPROVED:** \_\_\_\_\_, 2006.

\_\_\_\_\_

**Mayor**